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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0757; Airspace Docket No. 13–ASO–19]

Amendment of Class D and Class E Airspace; Christiansted, St. Croix, VI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace at Christiansted, St. Croix, VI, by adjusting the geographic coordinates of Henry E. Rohlsen Airport. The airport name also is changed from Alexander Hamilton Airport. This action brings current the effected charting and enhances airspace management within the National Airspace System.

DATES: Effective 0901 UTC, April 3, 2014. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On December 2, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D airspace and Class E airspace extending upward from 700 feet above the surface by changing the airport name and amending the geographic coordinates of Henry E. Rohlsen Airport, Christiansted, St. Croix, VI, to bring it in concert with the FAAs aeronautical database (78 FR 72056). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraphs 5000, and 6005, respectively of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace and Class E airspace extending upward from 700 feet above the surface airspace by amending the geographic coordinates of Henry E. Rohlsen Airport, Christiansted, St. Croix, VI, to bring it in concert with the FAAs aeronautical database. The coordinates are changed from (lat. 17°42′07″ N., long. 64°47′55″ W.) to (lat. 17°42′06″ N., long. 64°48′06″ W.). Also, the airport formerly called Alexander Hamilton Airport is changed to Henry E. Rohlsen Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Henry E. Rohlsen Airport, Christiansted, St. Croix, VI.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment

Lists of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO VI D Christiansted St. Croix, VI [Amended]

Henry E. Rohlsen Airport, VI

(Lat. 17°42′06″ N., long. 64°48′06″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.7-mile radius of Henry E. Rohlsen Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO VI E5 Christiansted St. Croix, VI [Amended]

Henry E. Rohlsen Airport, VI
(Lat. 17°42′06″ N., long. 64°48′06″ W.)
St Croix VOR/DME
(Lat. 17°44′04″ N., long. 64°42′03″ W.)
PESTE NDB
(Lat. 17°41′31″ N., long. 64°53″05″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Henry E. Rohlsen Airport, and within 3 miles each side of St. Croix VOR/DME 069° radial, extending from the 7.4-mile radius to 7 miles east of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within a 13-mile radius of Henry E. Rohlsen Airport, and within 8 miles north and 4 miles south of the St. Croix VOR/DME 069° radial, extending from the 13-mile radius to 16 miles east of the VOR/DME, and within 8 miles south and 4 miles north of the ILS localizer west course, extending from the 13-mile radius to 16 miles west of the PESTE NDB.

Issued in College Park, Georgia, on February 4, 2014.

Eric Fox,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2014–03061 Filed 2–12–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0682; Airspace Docket No. 13–ASO–17]

Amendment of Class E Airspace; McMinnville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at McMinnville, TN, as the Warri Non-Directional Beacon (NDB) has been decommissioned and new standard instrument approach procedures developed for Instrument Flight Rules (IFR) operations at Warren County Memorial Airport. This enhances the safety and management of aircraft operations at the airport.

DATES: Effective 0901 UTC, April 3, 2014. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On September 24, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Warren County Memorial Airport, McMinnville, TN. (78 FR 58489). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Warren County Memorial Airport, McMinnville, TN. Airspace reconfiguration is necessary due to the decommissioning of the Warri NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Warren County Memorial Airport, McMinnville, TN.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 McMinnville, TN [Amended]

Warren County Memorial Airport, TN
(Lat. 35°41′55″ N., long. 85°50′38″ W.)
Columbia River Park Hospital, Point In Space Coordinates
(Lat. 35°42′06″ N., long. 85°43′45″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Warren County Memorial Airport, and within a 6-mile radius of the point in space (lat. 35°42′06″ N., long. 85°43′45″ W.) serving Columbia River Park Hospital.

Issued in College Park, Georgia, on February 4, 2014.

Eric Fox,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2014–03058 Filed 2–12–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0683; Airspace Docket No. 13–ANE–1]

Amendment of Class E Airspace; Morrisville, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Morrisville, VT, as the Morrisville-Stowe Non-Directional Beacon (NDB) has been decommissioned, requiring airspace redesign at Morrisville-Stowe State Airport. This enhances the safety and management of aircraft operations at the airport. This action also updates the geographic coordinates of the airport.

DATES: Effective 0901 UTC, April 3, 2014. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On December 6, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Morrisville-Stowe State Airport, Morrisville, VT (78 FR 73465). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 14-mile radius of Morrisville-Stowe State Airport, Morrisville, VT.

Airspace reconfiguration is necessary due to the decommissioning of the Morrisville-Stowe NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport also are adjusted to be in concert with FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Morrisville-Stowe State Airport, Morrisville, VT.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment

Lists of Subjects in 14 CFR Part 71:

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, effective September 15, 2013, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANE VT E5 Morrisville, VT [Amended]

Morrisville-Stowe State Airport, VT
(Lat. 44°32′05″ N., long. 72°36′50″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Morrisville-Stowe State Airport.

Issued in College Park, Georgia, on February 4, 2014.

Eric Fox,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2014–03060 Filed 2–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0622; Airspace Docket No. 13–AWP–10]

Modification of Class D and Class E Airspace; Kailua-Kona, HI

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

ACTION: Final rule.

SUMMARY: This action amends Class D and E airspace at Kona International Airport at Keahole, Kailua-Kona, HI, to accommodate the Area Navigation (RNAV) Global Positioning System (GPS) and the Instrument Landing System (ILS) or Localizer (LOC) standard instrument approach procedures at the airport. This action also adjusts the geographic coordinates of the airport in the respective Class D and E airspace areas, and the airport name is corrected to Kona International Airport at Keahole. This action, initiated by the biennial review of the Kona airspace area, improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. In addition, a correction to the south segment extension of Class E airspace is made.

DATES: *Effective Date,* 0901 UTC, May 29, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Bill Nugent, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4518.

SUPPLEMENTARY INFORMATION:

History

On October 31, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Kailua-Kona, HI (78 FR 65241). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that in the proposal section of the NPRM, the south extension miles were inverted. It should read ''. . . is decreased from 14.5 miles to 8.5 miles south of the airport . . .'' The Class E regulatory text is correctly entered.

Class D and Class E airspace designations are published in paragraphs 5000, 6004 and 6005, respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface, at Kona International Airport at Keahole, Kailua-Kona, HI, to accommodate the RNAV (GPS) and ILS or LOC standard instrument approach procedures at the airport. The segment of controlled airspace extending from the 7.4-mile radius of the airport is decreased from 14.5 miles to 8.5 miles south of the airport. The geographic coordinates of the airport for the respective Class D and Class E airspace are updated to coincide with the FAA's aeronautical database. The airport formerly called Keahole Airport, Kailua-Kona, HI, is corrected to Kona International Airport at Keahole, Kailua-Kona, HI. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Kona International Airport at Keahole, Kailua-Kona, HI.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist, that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP HI D Kailua-Kona, HI [Modified]

Kona International Airport at Keahole, HI (Lat. 19°44′20″ N., long. 156°02′44″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Kona

International Airport at Keahole. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Area

* * * * *

AWP HI E4 Kailua-Kona, HI [Modified]

Kona International Airport at Keahole, HI
(Lat. 19°44′20″ N., long. 156°02′44″ W.)

That airspace extending upward from the surface within 2.8 miles either side of the 186° bearing of Kona International Airport at Keahole extending from the 4.3-mile radius of the airport to 5.7 miles south of the airport, and within 4.3 miles either side of the 006° bearing of the airport extending from the 4.3-mile radius to 11.5 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP HI E5 Kailua-Kona, HI [Modified]

Kona International Airport at Keahole, HI
(Lat. 19°44′20″ N., long. 156°02′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Kona International Airport at Keahole, and within 4.3 miles each side of the 006° bearing of the airport extending from the 7.4-mile radius to 11.5 miles north of the airport, and within 4 miles each side of the 186° bearing of the airport extending from the 7.4-mile radius to 8.5 miles south of the airport.

Issued in Seattle, Washington, on January 30, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–02951 Filed 2–12–14; 8:45 am]

BILLING CODE 4910–13–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 706

[No. FOIA–2013]

RIN 3420–ZA00

Freedom of Information

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements revisions to the Overseas Private Investment Corporation's (''OPIC'') Freedom of Information Act (FOIA) regulations by making substantive and administrative changes. These revisions are intended to supersede OPIC's current FOIA regulations, located at this part. The final rule incorporates the FOIA revisions contained in the Openness Promotes Effectiveness in our National Government Act of 2007 (''OPEN Government Act''), makes administrative changes to reflect OPIC's cost, and organizes the regulations to more closely match those of other agencies for ease of reference. The rule also reflects the disclosure principles established by President Barack Obama and Attorney General Eric Holder in their FOIA Policy Memoranda issued on January 12, 2009 and March 19, 2009, respectively.

DATES: This rule is effective February 14, 2014.

FOR FURTHER INFORMATION CONTACT: Nichole Cadiente, Administrative Counsel, (202) 336–8400, or *foia@opic.gov.*

SUPPLEMENTARY INFORMATION: The revision of Part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the OPEN Government Act. OPIC is already complying with these changes and this final rule serves as OPIC's formal codification of the applicable law and its practice.

The most significant change in this final rule is the treatment of business submitters. This section will define confidential commercial information more concisely and provide a default expiration date for confidentiality labels. This will enable OPIC to more efficiently process requests for commercial information, which comprise the majority of OPIC's FOIA requests. Among other substantive changes: the search date is now the responsive record cutoff date, the information OPIC posts online has been clarified, there is more detail on how to request records about an individual, and illustrative examples have been added.

OPIC published a proposed rule on December 4, 2013 at 78 FR 72843 and invited interested parties to submit comments. OPIC received two sets of comments and a forwarded set of best practices and has made several changes to its rule based on these suggestions.

OPIC adopted the following suggestions. First, OPIC made some editorial changes. An erroneous reference in § 706.11(e) was changed from Section 706.10(c) to § 706.24. Also the term ''non-public records'' was changed to ''records'' as it was suggested that requesters might consider ''non-public records'' to be records excluded from the FOIA.

Second, OPIC added a subsection for ''all other requesters'' to the listing of requester categories in Section 706.21 to make the listing comprehensive.

Third, OPIC added definitions of ''requester categories'' and ''fee waivers'' to §§ 706.21 and 706.24, respectively. These two fee relevant determinations are often confused by requesters and OPIC agrees that the public would benefit from explicit definitions.

Fourth, OPIC added the following sentence to the end of § 706.22(f): ''OPIC will not aggregate multiple requests that involve multiple matters.'' This language is already included in the other subsection dealing with request aggregation, § 706.30(e).

Fifth, OPIC has modified the example in § 706.30(f)(3) to remove the word ''professional.'' The sentence now reads: ''For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person whose primary activity or occupation is information dissemination.'' OPIC did so to address a concern that requesters might interpret the expedited processing provision relating to ''a person primarily engaged in information dissemination'' as applying only to persons who are paid for disseminating information. The new wording makes it clearer that the standard can be met regardless of whether the requester is paid.

Sixth, OPIC has reduced its per page charge for photocopies from $0.15 to $0.10.

OPIC considered, but did not adopt the following suggestions. First, OPIC did not adopt a suggestion to add a definitions section. OPIC's 2000 FOIA regulations contained a definitions section which was intentionally removed. Most definitions in the regulations are specific to a topic, therefore placing the definitions near the terms as they are used is more efficient for the reader.

Second, OPIC did not add suggested language specifying that the Privacy Act deals with first-party requests and the FOIA deals with third party requests. The suggested language does not reflect OPIC's practice. OPIC automatically processes first party requests under both the Privacy Act and the FOIA, regardless of which statute it is submitted under, and informs the requester of that dual processing in the acknowledgement letter.

Third, in § 706.11(a)(3), OPIC did not change the term, ''Where a request for records pertains to a third party'' to, ''Where a request for records pertains to

a living third party.'' This section provides information on how to obtain a fuller response on records for both a living and deceased third party, therefore the limitation to only a living party would be inaccurate.

Fourth, OPIC did not delete § 706.30(e). The commenter felt that this section, dealing with the effect of aggregated requests upon the timing of OPIC's responses, was duplicative of § 706.22(f), which deals with the effect of aggregation upon fees charged. Including a section that discusses the effects of aggregating requests in the fees section as well as the timing section ensures the public is aware of both effects.

Fifth, OPIC declined to include a provision obliging it to provide requesters with a contact within the referral agency when making referrals. Since other agencies often do not provide such information to OPIC, OPIC is not in a position to ensure that a requester will receive it.

Sixth, OPIC declined to change its appeal deadline to thirty calendar days or more. OPIC's 2000 regulations contained, and this final rule maintains, a twenty working day deadline for appeals. OPIC notes that twenty working days is roughly equal to thirty calendar days and that it is already meeting what several comments pointed to as an agency norm. The twenty working day deadline uses a date system consistent with most of the other deadlines in the FOIA. An agency's response deadline, as well as the extension for unusual circumstances, is measured in working days. In fact, the agency response deadline is the same length, twenty working days, during which agencies are expected to search for, review, and process a FOIA request. Although some comments expressed concern about the federal mail delay, OPIC's regulations use the postmark date, not the received by date. OPIC also notes that for at least the past five years it has not received any complaints from requesters about the deadline. In the one incident where OPIC received a request for an extension due to mail handling issues at the requester's office, OPIC granted the extension. Although OPIC's decision to measure appeal deadlines in working days rather than calendar days differs from many agencies, it is consistent with the way that response deadlines are measured within the regulations and provides a deadline that is effectively equivalent to the typical thirty calendar day deadline.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the head of OPIC has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule implements the FOIA, a statute concerning the release of federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this final rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202–05)

This final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.).

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 706

Administrative practice and procedure, Freedom of Information, Privacy.

■ For the reasons stated in the preamble the Overseas Private Investment Corporation revises 22 CFR Part 706 as follows:

PART 706—INFORMATION DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT

Subpart A—General

Sec.
706.1 Description.
706.2 Policy.
706.3 Scope.
706.4 Preservation and transfer of records.
706.5 Other rights and services.

Subpart B—Obtaining OPIC Records

706.10 Publically available records.
706.11 Requesting records.

Subpart C—Fees for Requests

706.20 Types of fees.
706.21 Requester categories.
706.22 Fees charged.
706.23 Advance payments.
706.24 Requirements for waiver or reduction of fees.

Subpart D—Processing of Requests

706.30 Timing of responses to requests.
706.31 Responses to requests.
706.32 Confidential commercial information.
706.33 Administrative appeals.

Authority: 5 U.S.C. 552.

Subpart A—General

§ 706.1 Description.

This part contains the rules that the Overseas Private Investment Corporation (''OPIC'') follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552 as amended. These rules should be read together with the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (''OMB Guidelines'').

§ 706.2 Policy.

It is OPIC's policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA. This policy includes providing reasonably segregable information from records that also contain information that may be withheld under the FOIA. However, implementation of this policy also reflects OPIC's view that the soundness and viability of many of its programs depend in large measure upon full and reliable commercial, financial, technical and business information received from applicants for OPIC assistance and that the willingness of those applicants to provide such information depends on OPIC's ability to hold it in confidence. Consequently, except as provided by

law and in this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

§ 706.3 Scope.

This part applies to all agency records in OPIC's possession and control. This part does not compel OPIC to create records or to ask outside parties to provide documents in order to satisfy a FOIA request. OPIC may, however, in its discretion and in consultation with a FOIA requester, create a new record as a partial or complete response to a FOIA request. In responding to requests for information, OPIC will consider only those records within its possession and control as of the date of OPIC's search.

§ 706.4 Preservation and transfer of records.

(a) *Preservation of records.* OPIC preserves all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) *Transfer of records to the National Archives.* Under the Records Disposal Act, 44 U.S.C. Chapter 33, OPIC is required to transfer legal custody and control of records with permanent historical value to the National Archives. OPIC's Finance Project and Insurance Contract Case files generally do not qualify as records with permanent historical value. OPIC will not transfer these files except when the National Archives determines that an individual project or case is especially significant or unique. If the National Archives receives a FOIA request for records that have been transferred it will respond to the request in accordance with its own FOIA regulations.

§ 706.5 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—Obtaining OPIC Records

§ 706.10 Publically available records.

Many OPIC records are readily available to the public by electronic access, including annual reports and financial statements, program handbooks, press releases, application forms, claims information, and annual FOIA reports. Records required to be proactively published under the FOIA are also online. Persons seeking information are encouraged to visit OPIC's Internet site at: *www.opic.gov* to see what information is already available before submitting a request.

§ 706.11 Requesting records.

(a) *General information.* (1) *How to submit.* To make a request for records not covered under Section 706.10, a requester must submit a written request to OPIC's FOIA Office either by mail to Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527 or electronic mail to *FOIA@opic.gov.* The envelope or subject line should read ''Freedom of Information Request'' to ensure proper routing. The request is considered received by OPIC upon actual receipt by OPIC's FOIA Office.

(2) *Records about oneself.* A requester who is making a request for records about himself or herself must verify his or her identity by providing a notarized statement or a statement under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization, stating that the requester is the person he or she claims to be.

(3) *Records about a third party.* Where a request for records pertains to a third party, a requester may receive greater access by submitting a notarized authorization signed by that individual, a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, proof of guardianship, or proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). OPIC may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable OPIC personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist OPIC in identifying the requested records, such as the project name, contract number, date or date range, country, title, name, author, recipient, subject matter of the record, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records sought. If a requester fails to reasonably describe the records sought, OPIC will inform the requester what additional information is needed or why the request is deficient. Any time you spend clarifying your request in response to OPIC's inquiry is excluded from the 20 working-day period (or any extension of this period) that OPIC has to respond to your request. Requesters who are attempting to reformulate or modify such a request may discuss their request with a FOIA Officer or a FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request OPIC shall notify the requester that the request has not been properly made and that no further action will be taken.

(c) *Format.* You may state the format (paper copies, electronic scans, etc.) in which you would like OPIC to provide the requested records. If you do not state a preference, you will receive any released records in the format most convenient to OPIC.

(d) *Requester information.* You must include your name, mailing address, and telephone number. You may also provide your electronic mail address, which will allow OPIC to contact you quickly to discuss your request and respond to your request electronically.

(e) *Fees.* You must state your willingness to pay fees under these regulations or, alternately, your willingness to pay up to a specified limit. If you believe that you qualify for a partial or total fee waiver under § 706.24 you should request a waiver and provide justification as required by § 706.24. If your request does not contain a statement of your willingness to pay fees or a request for a fee waiver, OPIC will consider your request an agreement to pay up to $25.00 in fees.

Subpart C—Fees for Requests

§ 706.20 Types of fees.

(a) Direct costs are those expenses that an agency expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment. OPIC shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(b) Duplication is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the

form of paper, audiovisual materials, or electronic records, among others.

(c) Review is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 706.32(c), but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(d) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records. Search costs are properly charged even if no records are located.

§ 706.21 Requester categories.

Requester category means one of five categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication. This is separate from a fee waiver, which waives any fees charged. Fee waivers are covered in § 706.24.

(a) A Commercial Use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(b) An Educational Use request is one made on behalf of an educational institution, defined as any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. Records requested for the intention of fulfilling credit requirements are not considered to be sought for an educational institution's use.

(c) A Noncommercial Scientific Institution Use request is a request made on behalf of a noncommercial scientific institution, defined as an institution that is not operated on a ''commercial'' basis, as defined in paragraph (a) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(d) A News Media Request is a request made by a representative of the news media in that capacity. A representative of the news media is defined as any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, OPIC shall also consider a requester's past publication record in making this determination. OPIC's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use.

(e) All Other Requesters is any request made for a use not covered by paragraphs (a) through (d) of this section.

§ 706.22 Fees charged.

(a) In responding to FOIA requests, OPIC will charge the following fees unless a waiver or reduction of fees has been granted under § 706.24.

(1) *Search.* (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (b) of this section.

(ii) For each hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Professional—$41.50; and administrative—$33.50.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(iv) For requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (b) of this section. OPIC will honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible in the form or format requested. Where photocopies are supplied, OPIC will provide one copy per request at a cost of $0.15 per page. For copies of records produced on tapes, disks, or other electronic media, OPIC will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication OPIC will charge the direct costs.

(3) *Review.* Review fees will be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by OPIC to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that a particular exemption no longer applies, any costs associated with the re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (a)(1)(ii) of this section.

(b) *Restrictions on charging fees.* (1) No search fees will be charged for educational use requests, noncommercial scientific use requests, or news media requests as defined in § 706.21. When OPIC fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances apply to the processing of the request, OPIC may not charge search fees, or, in the instances of requests from requesters defined in § 706.21(b) through (d), may not charge duplication fees.

(2) Except for requesters seeking records for a commercial use, OPIC will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(3) When the total fee calculated under this section is $25.00 or less for any request, no fee will be charged.

(c) *Notice of anticipated fees in excess of authorization.* When OPIC determines or estimates that the fees to be assessed in accordance with this section will exceed the amount authorized, OPIC will notify the requester of the actual or estimated amount of the fees, including a breakdown of fees for search, review, and duplication. Processing will be halted until the requester commits in writing to pay the actual or estimated total fee. This time will not count against OPIC's twenty day processing time or any extension of that time. Such a commitment must be made by the requester in writing, must indicate a given dollar amount, and must be received by OPIC within thirty calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the request shall be closed. A FOIA Officer or FOIA Public Liaison is available to assist any requester in reformulating a request in an effort to reduce fees.

(d) *Charges for other services.* Although not required to provide special services, if OPIC chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(e) *Charging interest.* OPIC may charge interest on any unpaid bill starting on the thirty-first day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by OPIC. OPIC will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) *Aggregating requests.* If OPIC reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OPIC may aggregate those requests and charge accordingly. OPIC will not aggregate multiple requests that involve unrelated matters.

(g) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, OPIC will inform the requester of the contact information for that source.

(h) *Remittances.* All payments under this part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

§ 706.23 Advance payments.

(a) For requests other than those described in paragraphs (i)(2) and (i)(3) of § 706.22, OPIC will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(b) When OPIC determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. OPIC may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(c) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within thirty calendar days of the billing date, OPIC may require that the requester pay the full amount due, plus any applicable interest on that prior request. OPIC may also require that the requester make an advance payment of the full amount of any anticipated fee before OPIC begins to process a new request or continues to process a pending request or any pending appeal. Where OPIC has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(d) In cases in which OPIC requires advance payment, OPIC's response time will be tolled and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within thirty calendar days after the date of OPIC's fee letter, OPIC may administratively close the request.

§ 706.24 Requirements for waiver or reduction of fees.

(a) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under § 706.22, where OPIC determines, based on all available information, that the requester has demonstrated that:

(1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) Disclosure of the information is not primarily in the commercial interest of the requester.

(b) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, OPIC will consider the following factors:

(1) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(2) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(3) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall ordinarily be presumed that a representative of the news media satisfies this consideration.

(4) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, OPIC shall not make value judgments about whether the information at issue is ''important'' enough to be made public.

(c) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, OPIC will consider the following factors:

(1) OPIC shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this

section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(2) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.

(d) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(e) Requests for a waiver or reduction of fees should be made when the request is first submitted to OPIC and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(f) The burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction falls on the requester.

Subpart D—Processing of Requests

§ 706.30 Timing of responses to requests.

(a) *In general.* OPIC ordinarily will respond to requests within twenty business days unless the request involves unusual circumstances as described in subparagraph (d) of this section. The response time will commence on the date that the request is received by the FOIA Office, but in any event not later than ten working days after the request is first received by OPIC. Any time tolled under paragraph (c) of this section does not count against OPIC's response time.

(b) *Multitrack processing.* OPIC has a track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. All non-expedited requests are processed on the regular track in the order they are received.

(c) *Tolling of response time.* OPIC may toll its response time once to seek clarification of a request in accordance with § 706.11(b) or as needed to resolve fee issues in accordance with §§ 706.22(c) and 706.23(d). The response time will resume upon OPIC's receipt of the requester's clarification or upon resolution of the fee issue.

(d) *Unusual circumstances.* Whenever the statutory time limits for processing cannot be met because of ''unusual circumstances'' as defined in the FOIA, and OPIC extends the time limits on that basis, OPIC will notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. This notice will be sent before the expiration of the twenty day period to respond. Where the extension exceeds ten working days, the requester will be provided an opportunity to modify the request or agree to an alternative time period for processing. OPIC will make its designated FOIA contact and its FOIA Public Liaison available for this purpose.

(e) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, OPIC may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. OPIC will not aggregate multiple requests that involve unrelated matters.

(f) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information;

(2) A request for expedited processing may be made at any time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person whose primary activity or occupation is information dissemination. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. A requester cannot satisfy the ''urgency to inform'' requirement solely by demonstrating that numerous articles have been published on a given subject. OPIC may waive the formal certification requirement at its discretion.

(4) OPIC shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If OPIC denies expedited processing, any appeal of that decision which complies with the procedures set forth in § 706.33 shall be acted on expeditiously.

§ 706.31 Responses to requests.

(a) *Acknowledgments of requests.* If a request will take longer than ten days to process, OPIC will send the requester an acknowledgment letter that assigns the request an individualized tracking number.

(b) *Grants of requests.* OPIC will notify the requester in writing if it makes a determination to grant a request in full or in part. The notice will inform the requester of any fees charged under § 706.22. OPIC will disclose the requested records to the requester promptly upon payment of any applicable fees.

(c) *Adverse determinations of requests.* OPIC will notify the requester in writing if it makes an adverse determination denying a request in any respect. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(d) *Content of denial letter.* The denial letter will be signed by the person responsible for the denial, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemptions applied;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A brief description of the types of information withheld and the reasons for doing so. A description and explanation are not required if providing it would harm an interest protected by an applicable exemption;

(5) A statement that the denial may be appealed under Section 706.33(a) of this subpart, and a description of the requirements set forth therein; and

(6) Notice of any fees charged under § 706.22.

(e) *Markings on released documents.* Where technically feasible, OPIC will mark withholdings made on released documents at the place where the withholding has been made and will include the exemption applied. Markings on released documents must be clearly visible to the requester.

(f) *Referrals to other government agencies.* If you request a record in OPIC's possession that was created or classified by another Federal agency, OPIC will promptly refer your request to that agency for direct response to you unless OPIC can determine by examining the record or by informal consultation with the originating agency that the record may be released in whole or part. OPIC will notify you of any such referral.

§ 706.32 Confidential commercial information.

(a) *Definitions.* (1) *Confidential commercial information* means commercial or financial information obtained from a submitter that may be protected from disclosure under Exemption 4 of the FOIA. Exemption 4 protects:

(i) Trade secrets; or

(ii) Commercial or financial information that is privileged or confidential where either: Disclosure of the information would cause substantial competitive harm to the submitter, or the information is voluntarily submitted and would not customarily be publicly released by the submitter.

(2) *Submitter* means any person or entity who provides confidential commercial information to OPIC, directly or indirectly.

(b) *Designation of confidential commercial information.* All submitters may designate, by appropriate markings, any portions of their submissions that they consider to be protected from disclosure under the FOIA. The markings may be made at the time of submission or at a later time. These markings will be considered by OPIC in responding to a FOIA request but such markings (or the absence of such markings) will not be dispositive as to whether the marked information is ultimately released. Unless otherwise requested and approved these markings will be considered no longer applicable ten years after submission or five years after the close of the associated project, whichever is later.

(c) *When notice to submitters is required.* (1) Except as provided in paragraph (d) of this section, OPIC's FOIA Office will use reasonable efforts to notify a submitter in writing whenever:

(i) The requested information has been designated in good faith by the submitter as confidential commercial information; or

(ii) OPIC has reason to believe that the requested information may be protected from disclosure under Exemption 4.

(2) This notification will describe the nature and scope of the request, advise the submitter of its right to submit written objections in response to the request, and provide a reasonable time for response. The notice will either describe the commercial information requested or include copies of the requested records. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) OPIC determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987.

(e) *Opportunity to object to disclosure.* (1) The submitter may, at any time prior to the disclosure date described in paragraph (c)(2) of this section, submit to OPIC's FOIA Office detailed written objections to the disclosure of the requested information, specifying the grounds upon which it contends that the information should not be disclosed. In setting forth such grounds, the submitter should explain the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information that the submitter believes to be exempt from disclosure under subsection (b)(4) of the FOIA, the submitter shall explain why the information is considered a trade secret or commercial or financial information that is privileged or confidential and either: How disclosure of the information would cause substantial competitive harm to the submitter, or why the information should be considered voluntarily submitted and why it is information that would not customarily be publicly released by the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received after the date of any disclosure decision will not be considered. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(3) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the submitter. Such written request shall set forth the date upon which any objections are expected to be completed and shall provide reasonable justification for the extension. In its discretion, OPIC may permit more than one extension.

(f) *Analysis of objections.* OPIC will consider a submitter's objections and specific grounds for nondislosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* If OPIC rejects the submitter's objections, in whole or in part, OPIC will promptly notify the submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a FOIA lawsuit seeking to compel the disclosure of confidential commercial information, OPIC will promptly notify the submitter.

(i) *Requester notification.* OPIC will notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 706.33 Administrative appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations denying his or her request to OPIC's Vice President and General Counsel at *FOIA@opic.gov* or 1100 New York Avenue NW.,

Washington, DC 20527. Examples of adverse determinations are provided in § 706.31(c). The requester must make the appeal in writing and it must be postmarked, or in the case of electronic submissions, transmitted, within twenty working days following the date on which the requester receives OPIC's denial. Appeals that have not been postmarked or transmitted within the twenty days will be considered untimely and will be administratively closed with notice to the requester. The appeal letter should include the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* OPIC's Vice President and General Counsel or his/her designee will render a written decision within twenty working days after the date of OPIC's receipt of the appeal, unless an extension of up to ten working days is deemed necessary due to unusual circumstances. The requester will be notified in writing of any extension.

(c) *Decisions on appeals.* A decision that upholds the initial determination will contain a written statement that identifies the reasons for the affirmance, including any FOIA exemptions applied, and will provide the requester with notification of the statutory right to file a lawsuit or the ability to request mediation from the Office of Government Information Services. If an initial determination is remanded or modified on appeal the requester will be notified in writing. OPIC's FOIA Office will then process the request in accordance with that appeal determination and respond directly to the requester. If an appeal is granted in whole or in part, the information will be made available promptly, provided the requirements of § 706.22 regarding payment of fees are satisfied.

(d) *When appeal is required.* Before seeking court review, a requester generally must first submit a timely administrative appeal.

Dated: January 28, 2014.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2014–03040 Filed 2–12–14; 8:45 am]

BILLING CODE P

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 707

[No. PA–2013]

Privacy Act

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements revisions to the Overseas Private Investment Corporation's (''OPIC'') Privacy Act (''PA'') regulations by making substantive and administrative changes. These revisions are intended to supersede OPIC's current PA regulations, located at this Part. The proposed rule updates the agency's address, makes administrative changes to reflect OPIC's cost, and organizes the regulations to more closely match those of other agencies for ease of reference.

DATES: This rule is effective February 14, 2014.

FOR FURTHER INFORMATION CONTACT: Nichole Cadiente, Administrative Counsel, (202)336–8400, or *foia@opic.gov.*

SUPPLEMENTARY INFORMATION: The revision of Part 707 incorporates changes to the language and structure of the regulations. Requesters are now provided more detail on the types of identity verification that may suffice for PA requests.

OPIC published a proposed rule on December 6, 2013 in 78 FR 73466 and invited interested parties to submit comments. OPIC received no comments on its proposed Privacy Act rule and therefore resubmits it as a final rule with one change. The fee for photocopy reproductions has been reduced from $0.15 to $0.10.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the head of OPIC has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule implements the PA, a statute concerning access to and corrections to records about an individual, and does not economically impact Federal Government relations with the private sector. Further, under the PA, agencies may recover only the direct costs of duplicating the records processes for requesters. Based on OPIC's experience, these fees are nominal.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this final rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202–05)

This final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.)

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 707

Administrative practice and procedure, Privacy.

For the reasons stated in the preamble the Overseas Private Investment Corporation revises 22 CFR Part 707 as follows:

PART 707—ACCESS TO AND SAFEGUARDING OF PERSONAL INFORMATION IN RECORDS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Subpart A—General

Sec.
707.11 Scope and purpose.
707.12 Definitions.
707.13 Preservation of records.

Subpart B—Requests for Access to Records; Amendment of Records, Accounting of Disclosures; Notice of Court Ordered Disclosures

707.21 Requests for access to or copies of records.

707.22 Requests to permit access of records to an individual other than the individual to whom the record pertains.
707.23 Requests for amendment of records.
707.24 Requests for an accounting of record disclosures.
707.25 Appeals.
707.26 Notification of court-ordered disclosures.
707.27 Fees.

Subpart C—Exceptions

707.31 Specific exemptions.
707.32 Special exemption.
707.33 Other rights and services.

Authority: 5 U.S.C. 552a.

Subpart A—General

§ 707.11 Scope and purpose.

This part applies to all records in systems of records maintained by OPIC that are retrievable by an individual's name or personal identifier. The rules in this part describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, or request an accounting of disclosures of records by OPIC. These rules should be read in conjunction with the Privacy Act of 1974, 5 U.S.C. 552a, which provides additional information about records maintained on individuals.

§ 707.12 Definitions.

As used in this part:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) *Maintain* includes maintain, collect, use, or disseminate;

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(d) *System of records* mean a group of any records under the control of OPIC from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(e) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(f) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 707.13 Preservation of records.

OPIC preserves all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the Privacy Act.

Subpart B—Requests for Access to Records; Amendment of Records, Accounting of Disclosures; Notice of Court Ordered Disclosures

§ 707.21 Requests for access to or copies of records.

(a) *How to submit.* An individual may request access to or copies of records maintained by OPIC that are retrieved by an individual's personal identifier. To make a request for records a requester must submit a written request to the Director of Human Resources Management either by mail or delivery to Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527 or electronic mail to *Privacy@opic.gov.* The envelope or subject line should read ''Privacy Act Request'' to ensure proper routing. Access to records maintained by OPIC will be provided only by appointment. No officer or employee of OPIC shall provide an individual with any records under this part until a written request as described in paragraph (b) of this section is provided and the identity of the individual is verified as described in paragraph (c) of this section.

(b) *Information to include.* All requests under this section must:

(1) Be in writing and be signed by the requester. Unless the requester is a current officer or employee of OPIC, the letter must also be duly acknowledged before a notary public or other authorized public official or signed under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;

(2) Provide information sufficient to verify the identity of the requester, including the requester's full name, current address, date of birth, place of birth, or the system of record identification name or number. Also include a clearly legible copy of a valid form of identification. If the request is being made by a parent or guardian on behalf of another, also include the same information for the individual who is the subject of the request along with a court order, birth certificate, or similar document proving the guardianship. OPIC will review the sufficiency of identity evidence under paragraph (c) of this section;

(3) Provide information sufficient to accurately identify the records or information so that OPIC staff can locate the records with a reasonable amount of effort. At minimum this should include the full name, the system of record identification name, or the system identification number for the individual who is the subject of the records. Provision of a social security number is optional. If possible, also include a description of the records as well as providing a record creation time range and the name of the systems that should be searched. A description of OPIC's system of records can be located in the ''Privacy Act Compilation'' published by the National Archives and Records Administration's Office of the Federal Register. Each system of records is also published in the **Federal Register**;

(4) Specify whether the individual wishes access to or copies of the information pertaining to him. If access is requested, provide at least one preferred date and hour for which an appointment is requested during regular business hours as provided in paragraph (a) of this section. OPIC encourages appointments to be made at least one week in advance and for a requester to provide at least three preferred appointment times; and

(5) Include an agreement to pay fees or an agreement to pay fees up to a specified amount under § 707.27. A request that does not include an agreement to pay fees will be considered an agreement to pay fees up to $25.00.

(c) *Verification of identity.* Prior to providing any requested information about an individual, the Director of Human Resources Management shall verify the identity of the individual. If the requester is acting as the guardian of the individual who is the subject of the records, the Director will also verify the identity of the individual who is the subject of the records, the relationship between the requester and the subject individual, and that the requester is acting on behalf of the subject individual. In order to verify identity, the Director shall require the individual to provide reasonable proof of identity such as a valid driver's license, identification card, passport, employee identification card, or any other identifying information. The Director shall deny any request where she

determines, at her sole discretion, that the evidence offered to verify the identity of an individual is insufficient to conclusively establish the identity of the individual.

(d) *Release of records.* Originals and record copies will not be released from the files of OPIC. Individuals will not be permitted to disturb any record files or to remove records from designated place of examination. If copies were requested in the request letter, copies will be furnished upon payment of the fees prescribed in § 707.27.

(e) *Denial of request.* If the Director of Human Resources Management declines any request submitted under this section, the denial will be made in writing and contain a brief description of the denial. Denials include a determination that an individual has not provided adequate evidence to verify identity under paragraph (c) of this section, a determination that the record cannot be located, and a withholding of a record in whole or in part. In the event of a denial, the requester may file a written appeal within thirty days of the date of notification, following the procedures in § 707.25.

§ 707.22 Requests to permit access of records to an individual other than the individual to whom the record pertains.

(a) *Access by an authorized individual.* An individual requester who wishes to be accompanied by another individual when reviewing records pertaining to the requester must provide OPIC with a signed, written statement authorizing discussion of the information contained in the records in the presence of the accompanying individual. Both parties will be required to verify their identity under § 707.21(c) before access is granted.

(b) *Release to an authorized individual.* An individual requester who wishes to have copies of records pertaining to the requester released to another individual must provide OPIC with a written statement authorizing release of the information contained in the records to the other individual. The identity of the individual to whom the record pertains must be verified under § 707.21(c) before release is authorized.

(c) *Access or release to parent or guardian.* Guardians will be provided access or copies under the provisions of § 707.21.

§ 707.23 Requests for amendment of records.

(a) *How to submit.* Unless a record is not subject to amendment, per paragraphs (g) and (h) of this section, an individual may request an amendment of a record to correct information the individual believes is not accurate, relevant, timely, or complete. The request must be in writing, labeled ''Privacy Act Request,'' and should be addressed to the Director of Human Resources Management. The request may either be mailed to OPIC or delivered to the receptionist at 1100 New York Avenue NW., Washington, DC 20527, during regular business hours, between 8:45 a.m. and 5:30 p.m., Monday through Friday, excluding public holidays. The request will be considered received when actually delivered to or, if mailed, when it is actually received by the Director of Human Resources Management.

(b) *Information to include.* All requests under this section must:

(1) Be in writing and be signed by the requester. Unless the requester is a current officer or employee of OPIC, the letter must also be duly acknowledged before a notary public or other authorized public official or signed under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;

(2) Provide information sufficient to verify the identity of the requester, including the requester's full name, current address, date of birth, place of birth, or the system of record identification name or number. Also include a clearly legible copy of a valid form of identification. If the request is being made by a parent or guardian on behalf of another, also include the same information for the individual who is the subject of the request along with a court order, birth certificate, or similar document proving the guardianship. OPIC will review the sufficiency of identity evidence under paragraph (c) of this section;

(3) Provide information sufficient to accurately identify each record so that OPIC staff can locate the record and information with a reasonable amount of effort. At minimum this should include the full name, the system of record identification name, or the system record identification number for the individual who is the subject of the records and the name for each system that you believe the record is located in. Provision of a social security number is optional. If possible, you should also include a description of the records and provide a record creation time range. A description of OPIC's systems of records can be located in the ''Privacy Act Compilation'' published by the National Archives and Records Administration's Office of the Federal Register. Each system of records is also published in the **Federal Register**;

(4) Specify the correction requested; and

(5) Detail the basis for the requester's belief that the records and information are not accurate, relevant, timely, or complete. This includes providing substantial and reliable evidence sufficient to permit OPIC to determine whether an amendment is in order.

(c) *Verification of identity.* Prior to amending information about an individual, the Director of Human Resources Management shall verify the identity of the requesting individual. If the requester is acting as the guardian of the individual who is the subject of the records, the Director will also verify the identity of the individual who is the subject of the records, the relationship between the requester and the subject individual, and that the requester is acting on behalf of the subject individual. In order to verify identity, the Director shall require the individual to provide reasonable proof of identity such as a valid driver's license, identification card, passport, employee identification card, or any other identifying information. The Director shall deny any request where she determines, at her sole discretion, that the evidence offered to verify the identity of an individual is insufficient to conclusively establish the identity of the individual.

(d) *Acknowledgment of request.* If a request will take longer than ten (10) business days to process, OPIC will send the requester an acknowledgment letter. Any request that Director of Human Resources Management determines does not describe records or information in enough detail to permit the staff to promptly locate the records; does not describe the correction requested in enough detail to permit the staff to make a correction; or does not reasonably specify the amendment requested or its basis will be returned without prejudice to the requester and treated as not received.

(e) *Determination.* The Director of Human Resources Management will provide a determination on a request under this section within thirty (30) days from receipt.

(1) *Amendment.* The Director of Human Resources Management will notify the requester in writing if the amendment is made and provide the individual an opportunity to request a copy of the amended record.

(2) *Denial.* The Director of Human Resources Management will notify the requester in writing if she denies any portion of a request made under this section. The denial will include a brief explanation of the reason for the refusal and the right of the individual to file an appeal within thirty (30) days, following the procedures in § 707.25. In the event

an appeal is denied, a requester may file a statement of disagreement with OPIC as described in § 707.25(c).

(f) *Notification of amendment.* Within thirty (30) days of the amendment or correction of a record or the filing of a statement of disagreement, OPIC will notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made. If an individual has filed a statement of disagreement, OPIC will attach a copy of it to the disputed record whenever the record is disclosed in the future and may also attach a concise statement of its reasons for denying the request to amend or correct.

(g) *Records not subject to amendment.* The following records are not subject to amendment:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k) or by notice published in the **Federal Register**.

(h) *No amendment permitted.* No part of these rules shall be construed to permit:

(1) The alteration of evidence presented in the course of judicial, quasi-judicial, or quasi-legislative proceedings;

(2) Collateral attack upon any matter which has been the subject of judicial or quasi-judicial action; or

(3) An amendment or correction which would be in violation of an existing statute, executive order, or regulation.

§ 707.24 Requests for an accounting of record disclosures.

(a) *How to submit.* Unless an accounting of disclosures is not required to be kept under paragraph (e) of this section, an individual may request an accounting of all disclosures OPIC has made of a record, maintained in a system of records and about the individual, to another person, organization, or agency. The request must be in writing, labeled ''Privacy Act Request,'' and should be addressed to the Director of Human Resources Management. The request may either be mailed to OPIC or delivered to the receptionist at 1100 New York Avenue NW., Washington, DC 20527, during regular business hours, between 8:45 a.m. and 5:30 p.m., Monday through Friday, excluding public holidays. The request will be considered received when actually delivered to or, if mailed, when it is actually received by the Director of Human Resources Management.

(b) *Information to include.* All requests under this section must:

(1) Be in writing and be signed by the requester. Unless the requester is a current officer or employee of OPIC, the letter must also be duly acknowledged before a notary public or other authorized public official or signed under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;

(2) Provide information sufficient to verify the identity of the requester, including the requester's full name, current address, date of birth, place of birth, or the system of record identification name or number. Also include a clearly legible copy of a valid form of identification. If the request is being made by a parent or guardian on behalf of another, also include the same information for the individual who is the subject of the request along with a court order, birth certificate, or similar document proving the guardianship. OPIC will review the sufficiency of identity evidence under paragraph (c) of this section;

(3) Provide information sufficient to accurately identify the records or information so that OPIC staff can locate the records with a reasonable amount of effort. At minimum this should include the full name, the system of record identification name, or the system record identification number for the individual who is the subject of the records and the name for each system that you believe the record is located in. Provision of a social security number is optional. If possible, you should also include a description of the records and provide a time range. A description of OPIC's system of records can be located in the ''Privacy Act Compilation'' published by the National Archives and Records Administration's Office of the Federal Register. Each system of records is also published in the **Federal Register**;

(4) Include an agreement to pay fees or an agreement to pay fees up to a specified amount under § 707.27. A request that does not include an agreement to pay fees will be considered an agreement to pay fees up to $25.00.

(c) *Verification of identity.* Prior to providing any requested information about an individual, the Director of Human Resources Management shall verify the identity of the requesting individual. If the requester is acting as the guardian of the individual who is the subject of the records, the Director will also verify the identity of the individual who is the subject of the records, the relationship between the requester and the subject individual, and that the requester is acting on behalf of the subject individual. In order to verify identity, the Director shall require the individual to provide reasonable proof of identity such as a valid driver's license, identification card, passport, employee identification card, or any other identifying information. The Director shall deny any request where she determines, at her sole discretion, that the evidence offered to verify the identity of an individual is insufficient to conclusively *establish* the identity of the individual.

(d) *Determination.* The Director of Human Resources Management will provide a requester with one of the following:

(1) *Provision of accounting of disclosures.* If the request is granted, the Director of Human Resources Management will provide the individual with an accounting containing the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made.

(2) *Denial.* The Director of Human Resources Management will notify the individual in writing if she denies any portion of a request made under this section. The denial will include a brief explanation of the reason for the refusal and the right of the individual to request a review thereof under the provisions of § 707.25.

(e) *Disclosures where an accounting of disclosures is not required.* OPIC need not provide an accounting of disclosures where:

(1) The disclosures are of the type for which accountings are not kept. For example, disclosures made to employees within the agency; or

(2) The disclosure was made in response to a written request from a law enforcement agency for authorized law enforcement purposes.

§ 707.25 Appeals.

An individual may appeal a denial made under §§ 707.21 through 707.23 within thirty (30) days of the notification of such denial.

(a) *How to submit.* The appeal must be in writing, labeled ''Privacy Act Appeal,'' and should be addressed to the Executive Vice President. The request may either be mailed to OPIC or delivered to the receptionist at 1100 New York Avenue NW., Washington, DC 20527, during regular business hours, between 8:45 a.m. and 5:30 p.m.,

Monday through Friday, excluding public holidays.

(b) *Information to include.* All requests under this section must:

(1) Be in writing and be signed by the requester;

(2) Be clearly labeled ''PRIVACY ACT APPEAL'' on both the letter and the envelope;

(3) Clearly reference the determination being appealed; and

(4) Provide support for your information, including documentation provided in the initial determination and any additional information.

(b) *Appeal determination.* The Executive Vice President will advise the individual of OPIC's determination within thirty (30) business days. If the Executive Vice President is unable to provide a determination within thirty business days, the individual will be advised in writing of the reason before the expiry of the thirty business days.

(1) *Overturn initial determination.* If the Executive Vice President grants the appeal and overturns the initial determination in whole or part, the individual will be notified in writing and the requested action taken promptly along with any other steps OPIC would have taken had the initial determination come to the same result as the appeal.

(2) *Uphold initial determination.* If the Executive Vice President denies the appeal and upholds the initial determination in whole or in part, the individual will be notified in writing and provided with an explanation. In cases where a denial of amendment or correction is upheld, the individual will also be notified of the ability to file a statement of disagreement under paragraph (c) of this section.

(c) *Statement of disagreement.* If an individual is denied a request to amend a record in whole or in part and that denial is upheld on appeal, the individual may file a statement of disagreement. Statements of disagreement must be concise, clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The statement of disagreement will be placed in the system of records that contains the disputed record and the record will be marked to indicate that a statement of disagreement has been filed. The statement of disagreement will be attached to any future releases of the disputed record and may be accompanied by a concise statement from OPIC explaining its denial.

§ 707.26 Notification of court-ordered disclosures.

(a) Except in cases under paragraph (c) of this section, when a record pertaining to an individual is required to be disclosed by court order, OPIC will make reasonable efforts to provide notice of this to the individual. If OPIC cannot locate the individual, notice will be deemed sufficient for this part if it is mailed to the individual's last known address. The notice will contain a copy of the order and a description of the information disclosed.

(b) Notice will be given within a reasonable time after OPIC's receipt of the order, unless the order is not a matter of public record. In those cases, the notice will be given only after the order becomes public.

(c) Notice is not required if disclosure is made from an exempt system of records.

§ 707.27 Fees.

(a) The fees to be charged for making copies of any records provided to an individual under this part are ten (10) cents per page. No fees will be charged for search or review.

(b) At its discretion, OPIC may grant a request for special services such as mailing copies by means other than first class mail or providing document certification. All special services provided to the requester will be provided at cost.

(c) OPIC considers any request under the Privacy Act to be an authorization to incur up to $25.00 in fees unless a request states otherwise.

(d) OPIC may condition access to records or copies of records upon full payment of any fees due.

(e) All payments under this part must be in the form of a check or bank draft denominated in U.S. currency. Checks should be made payable to the order of the United States Treasury and mailed or hand delivered to OPIC at 1100 New York Avenue NW., Washington, DC 20527.

Subpart C—Exceptions

§ 707.31 Specific exemptions.

The provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f) shall not apply to any system of records maintained by OPIC that is—

(a) Subject to the provisions of 5 U.S.C. 552(b)(1);

(b) Composed of Investigatory material compiled for law enforcement purposes other than those specified in 5 U.S.C. 552a(j)(2);

(c) Required by statute to be maintained and used solely as statistical records;

(d) Composed of investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts or access to classified information, but only to the extent that OPIC may determine, in its sole discretion, that the disclosure of such material would reveal the identity of the source who, subsequent to September 27, 1975, furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to such date, under an implied promise to such effect; and

(e) Composed of testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service and OPIC determines, in its sole discretion, that disclosure of such materials would compromise the fairness of the testing or examination process.

§ 707.32 Special exemption.

Nothing in this part shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 707.33. Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Dated: January 28, 2014.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2014–03039 Filed 2–12–14; 8:45 am]

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OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 713

[No. TOUHY–2013]

RIN 3420–AA02

Production of Nonpublic Records and Testimony of OPIC Employees in Legal Proceedings

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: This rule implements revisions to the Overseas Private Investment Corporation's (''OPIC'') regulations governing the production of nonpublic testimony or records for court proceedings, commonly known as Touhy regulations after *Touhy* v. *Ragen.*

DATES: This rule is effective February 14, 2014.

FOR FURTHER INFORMATION CONTACT: Nichole Cadiente, Administrative

Counsel, (202) 336–8400, or *foia@opic.gov.*

SUPPLEMENTARY INFORMATION: The amendment of Part 713 clarifies that the Touhy regulations must be complied with prior to the serving of a subpoena.

OPIC published a proposed rule on December 4, 2013 in 78 FR 72850 and invited interested parties to submit comments. OPIC received no comments and therefore submits the revisions to Part 713 as a final rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the head of OPIC has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule amends regulations governing the procedures for a third party to request government records and testimony in litigation, and does not economically impact Federal Government relations with the private sector. Further, under these regulations, OPIC may only charge the actual cost for records, based upon FOIA regulations in Part 706, and the fees set by the court for witness testimony. OPIC is authorized to charge actual costs for its services based on 31 U.S.C. 9701.

Executive Order 12866

OPIC is exempted from the requirements of this Executive Order per the Office of Management and Budget's October 12, 1993 memorandum. Accordingly, OMB did not review this final rule. However this rule was generally composed with the principles stated in section 1(b) of the Executive Order in mind.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202–05)

This final rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.)

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 22 CFR Part 713

Administrative practice and procedure, Courts, Government Employees, Subpoenas.

For the reasons stated in the preamble the Overseas Private Investment Corporation amends 22 CFR part 713 as follows:

PART 713—PRODUCTION OF NONPUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS

■ 1. The authority citation for part 713 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702, 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

■ 2. Revise § 713.2 to read as follows:

§ 713.2 When does this part apply?

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release, records which OPIC discretionarily releases under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a, or records that OPIC releases under any other applicable authority.

■ 3. Revise § 713.3 to read as follows:

§ 713.3 How do I request nonpublic records or testimony?

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request as described in § 713.4 to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part.

■ 4. Revise § 713.5 to read as follows:

§ 713.5 When should I make my request?

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. OPIC retains full discretion to grant, deny, or propose a new completion date on any request for expedited processing. If you are requesting the testimony of an OPIC employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

■ 5. Revise the section heading of § 713.10 to read as follows:

§ 713.10 Definitions.

* * * * *

Dated: January 28, 2014.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2014–03037 Filed 2–12–14; 8:45 am]

BILLING CODE 3195–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1987

[Docket Number: OSHA–2011–0859]

RIN 1218–AC58

Procedures for Handling Retaliation Complaints Under Section 402 of the FDA Food Safety Modernization Act

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule.

SUMMARY: This document provides the interim final regulations governing the employee protection (whistleblower) provision found at section 402 of the FDA Food Safety Modernization Act (FSMA), which added section 1012 to the Federal Food, Drug, and Cosmetic Act. This interim rule establishes procedures and time frames for the handling of retaliation complaints under FSMA, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor), and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on February 13, 2014. Comments and additional materials must be submitted (post-marked, sent or received) by April 14, 2014.

ADDRESSES: You may submit your comments by using one of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: You may submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0859, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2011–0859). Submissions, including any personal information provided, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions against submitting personal information such as social security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Katelyn Wendell, Program Analyst, Directorate of Whistleblower Protection Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. Email: *wendell.katelyn@dol.gov.* This **Federal Register** publication is available in alternative formats. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (Pub. L. 111–353, 124 Stat. 3885), was signed into law on January 4, 2011. Section 402 of the FDA Food Safety Modernization Act amended the Federal Food, Drug, and Cosmetic Act (FD&C) to add section 1012, 21 U.S.C. 399d, which provides protection to employees against retaliation by an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food for engaging in certain protected activities. Section 1012 protects employees against retaliation because they provided or are about to provide to their employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of the FD&C or any order, rule, regulation, standard, or ban under the FD&C; testified or are about to testify in a proceeding concerning such violation; assisted or participated, or are about to assist or participate, in such a proceeding; or objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believed to be in violation of any provision of the FD&C or any order, rule, regulation, standard, or ban under the FD&C.

Section 1012 became effective upon enactment on January 4, 2011. Although the Food and Drug Administration of the U.S. Department of Health and Human Services (FDA) generally administers the FD&C, the Secretary of Labor is responsible for enforcing the employee protection provision set forth in section 1012 of the FD&C. These interim rules establish procedures for the handling of whistleblower complaints under section 1012 of the FD&C. Throughout this interim final rule, FSMA refers to section 402 of the FDA Food Safety Modernization Act, codified as section 1012 of the Federal Food, Drug and Cosmetic Act. *See* 21 U.S.C. 399d.

II. Summary of Statutory Procedures

FSMA's whistleblower provisions include procedures that allow a covered employee to file, within 180 days of the alleged retaliation, a complaint with the Secretary of Labor (Secretary). Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated the FSMA (respondent) of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the complainant and respondent an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation.

The statute provides that the Secretary may conduct an investigation only if the complainant has made a prima facie showing that the protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that it would have taken the same adverse action in the absence of that activity (see section 1987.104 for a summary of the investigation process). OSHA interprets the prima facie case requirement as allowing the complainant to meet this burden through the complaint as supplemented by interviews of the complainant.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the respondent of those findings, along with a preliminary order that requires the respondent to, where appropriate: take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as all costs and expenses (including attorney fees and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

The complainant and the respondent then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing before an ALJ. The filing of objections under FSMA will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, the statute requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the conclusion of any hearing in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary, where appropriate, will assess against the respondent a sum equal to the total amount of all costs and expenses, including attorney and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer reasonable attorney fees, not exceeding $1,000, if the Secretary finds that the complaint is frivolous or has been brought in bad faith.

Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit where the complainant resided on the date of the violation.

FSMA permits the employee to seek de novo review of the complaint by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination. The court will have jurisdiction over the action without regard to the amount in controversy, and the case will be tried before a jury at the request of either party.

FSMA also provides that nothing therein preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law. Finally, FSMA states that nothing therein shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement, and the rights and remedies in FSMA may not be waived by any agreement, policy, form, or condition of employment.

III. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of FSMA. Responsibility for receiving and investigating complaints under FSMA has been delegated to the Assistant Secretary for Occupational Safety and Health (Assistant Secretary). Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the ARB. Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1987.100 Purpose and Scope

This section describes the purpose of the regulations implementing FSMA and provides an overview of the procedures covered by these regulations.

Section 1987.101 Definitions

This section includes general definitions from the FD&C, which are applicable to the whistleblower provisions of FSMA. The FD&C states that the term ''person'' includes an individual, partnership, corporation, and association. *See* 21 U.S.C. 321(e). The FD&C also defines the term ''food'' as ''(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.'' *See* 21 U.S.C. 321(f).

Section 1987.102 Obligations and Prohibited Acts

This section describes the activities that are protected under FSMA, and the conduct that is prohibited in response to any protected activities. Under FSMA, an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food may not retaliate against an employee because the employee ''provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this chapter or any order, rule, regulation, standard, or ban under this chapter.'' Section 1012(a)(1), 21 U.S.C. 399d(a)(1). FSMA also protects employees who testify, assist or participate in proceedings concerning such violations. *See* Sections 1012(a)(2) and (3), 21 U.S.C. 399d(a)(2) and (3). Finally, FSMA prohibits retaliation because an employee ''objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this chapter, or any order, rule, regulation, standard, or ban under this chapter.'' Section 1012(a)(4), 21 U.S.C. 399d(a)(4). References to ''this chapter'' in section 1012(a)(1) and (4) refer to the FD&C, which is chapter 9 of title 21. 21 U.S.C. 301 *et seq.* Although an entity must therefore be engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food in order to be covered by FSMA, a complainant's whistleblower activity will be protected when it is based on a reasonable belief that any provision of the FD&C, or any order, rule, regulation, standard, or ban under the FD&C, has been violated.

In order to have a ''reasonable belief'' under FSMA, a complainant must have both a subjective, good faith belief and an objectively reasonable belief that the complained-of conduct violated the FD&C or any order, rule, regulation, standard, or ban under the FD&C. *See Sylvester* v. *Parexel Int'l LLC,* ARB No. 07–123, 2011 WL 2165854, at *11–12 (ARB May 25, 2011) (discussing the reasonable belief standard under analogous language in the Sarbanes-Oxley Act whistleblower provision, 18 U.S.C. 1514A). The requirement that the complainant have a subjective, good faith belief is satisfied so long as the complainant actually believed that the conduct complained of violated the relevant law. *See id.* The objective ''reasonableness'' of a complainant's belief is typically determined ''based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.'' *Id.* at *12 (internal quotation marks and citation omitted). However, the complainant need not show that the conduct complained of constituted an actual violation of law. Pursuant to this standard, an employee's whistleblower activity is protected where it is based on a reasonable, but mistaken, belief that a violation of the relevant law has occurred. *Id.* at *13.

Section 1987.103 Filing of Retaliation Complaint

This section explains the requirements for filing a retaliation complaint under FSMA. To be timely, a

complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision to take an adverse action. *See Equal Emp't Opportunity Comm'n* v. *United Parcel Serv., Inc.,* 249 F.3d 557, 561–62 (6th Cir. 2001). The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint to be tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

Complaints filed under FSMA need not be in any particular form. They may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

OSHA notes that a complaint of retaliation filed with OSHA under FSMA is not a formal document and need not conform to the pleading standards for complaints filed in federal district court articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009). *See Sylvester,* 2011 WL 2165854, at *9–10 (holding whistleblower complaints filed with OSHA under analogous provisions in the Sarbanes-Oxley Act need not conform to federal court pleading standards). Rather, the complaint filed with OSHA under this section simply alerts OSHA to the existence of the alleged retaliation and the complainant's desire that OSHA investigate the complaint. Upon receipt of the complaint, OSHA is to determine whether the ''complaint, supplemented as appropriate by interviews of the complainant'' alleges ''the existence of facts and evidence to make a prima facie showing.'' 29 CFR 1987.104(e). As explained in section 1987.104(e), if the complaint, supplemented as appropriate, contains a prima facie allegation, and the respondent does not show clear and convincing evidence that it would have taken the same action in the absence of the alleged protected activity, OSHA conducts an investigation to determine whether there is reasonable cause to believe that retaliation has occurred. *See* 21 U.S.C. 399d(b)(2)(A), 29 CFR 1987.104(e).

Section 1987.104 Investigation

This section describes the procedures that apply to the investigation of complaints under FSMA. Paragraph (a) of this section outlines the procedures for notifying the parties and the FDA of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) specifies that OSHA will provide to the complainant (or the complainant's legal counsel if the complainant is represented by counsel) a copy of respondent's submissions to OSHA that are responsive to the complainant's whistleblower complaint at a time permitting the complainant an opportunity to respond to those submissions. Before providing such materials to the complainant, OSHA will redact them in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. Paragraph (d) of this section discusses confidentiality of information provided during investigations.

Paragraph (e) of this section sets forth the applicable burdens of proof. FSMA requires that a complainant make an initial prima facie showing that protected activity was ''a contributing factor'' in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. The complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place within a temporal proximity of the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. *See, e.g. Porter* v. *Cal. Dep't of Corr.,* 419 F.3d 885, 895 (9th Cir. 2005) (years between the protected activity and the retaliatory actions did not defeat a finding of a causal connection where the defendant did not have the opportunity to retaliate until he was given responsibility for making personnel decisions).

If the complainant does not make the required prima facie showing by raising a non-frivolous allegation of retaliation, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the Energy Reorganization Act of 1974 (ERA), which is the same framework now applicable to FSMA, serves a ''gatekeeping function'' that ''stem[s] frivolous complaints''). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under FSMA and not investigate further if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statute requires OSHA to determine whether there is reasonable cause to believe that protected activity was a contributing factor in the alleged adverse action. A contributing factor is ''any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (internal quotation marks, emphasis and citation omitted) (discussing the Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)); *see also Addis* v. *Dep't of Labor,* 575 F.3d 688, 689–91 (7th Cir. 2009) (discussing *Marano* as applied to analogous whistleblower provision in the ERA); *Clarke* v. *Navajo Express, Inc.,* ARB No. 09–114, 2011 WL 2614326, at *3 (ARB June 29, 2011) (discussing burdens of proof under analogous whistleblower provision in the Surface Transportation Assistance Act (STAA)). For protected activity to be a contributing factor in the adverse action, ''a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,'' because a complainant alternatively can prevail by showing that the respondent's '' 'reason, while true, is only one of the reasons for its conduct,' '' and that another reason was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* ARB No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (quoting *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)) (discussing contributing factor test under the Sarbanes-Oxley whistleblower provision), *aff'd sub*

nom. Klopfenstein v. *Admin. Review Bd., U.S. Dep't of Labor,* 402 F. App'x 936, 2010 WL 4746668 (5th Cir. 2010).

If OSHA finds reasonable cause to believe that the alleged protected activity was a contributing factor in the adverse action, OSHA may not order relief if the employer demonstrates by clear and convincing evidence that it would have taken the same action in the absence of the protected activity. *See* 21 U.S.C. 399d(b)(2)(C). The ''clear and convincing evidence'' standard is a higher burden of proof than a ''preponderance of the evidence'' standard. Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain. *Clarke,* 2011 WL 2614326, at *3.

Paragraph (f) describes the procedures OSHA will follow prior to the issuance of findings and a preliminary order when OSHA has reasonable cause to believe that a violation has occurred.

Section 1987.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement, affirmative action to abate the violation, back pay with interest, and compensatory damages. The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, preliminary order, also advise the respondent of the right to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

In ordering interest on back pay under FSMA, the Secretary has determined that interest due will be computed by compounding daily the Internal Revenue Service interest rate for the underpayment of taxes, which under 26 U.S.C. 6621 is generally the Federal short-term rate plus three percentage points. The Secretary believes that daily compounding of interest achieves the make-whole purpose of a back pay award. Daily compounding of interest has become the norm in private lending and was found to be the most appropriate method of calculating interest on back pay by the National Labor Relations Board. *See Jackson Hosp. Corp.* v. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union,* 356 NLRB No. 8, 2010 WL 4318371, at *3–4 (NLRB Oct. 22, 2010). Additionally, interest on tax underpayments under the Internal Revenue Code, 26 U.S.C. 6621, is compounded daily pursuant to 26 U.S.C. 6622(a).

In ordering back pay, OSHA will require the respondent to submit the appropriate documentation to the Social Security Administration (SSA) allocating the back pay to the appropriate calendar quarters. Requiring the reporting of back pay allocation to the SSA better serves the remedial purposes of FSMA by ensuring that employees subjected to discrimination are truly made whole. *See Latino Express, Inc., et al,* 359 NLRB No. 44, 2012 WL 6641632 (NLRB Dec. 18, 2012). As the NLRB explained, when back pay is not properly allocated to the years covered by the award, a complainant may be disadvantaged in several ways. First, improper allocation may interfere with a complainant's ability to qualify for any old-age Social Security benefit. *Id.* at *2 (''Unless a [complainant's] multiyear backpay award is allocated to the appropriate years, she will not receive appropriate credit for the entire period covered by the award, and could therefore fail to qualify for any old-age Social Security benefit.''). Second, improper allocation may reduce the complainant's eventual monthly benefit. *Id.* As the NLRB explained, ''[i]f a backpay award covering a multi-year period is posted as income for one year, it may result in SSA treating the [complainant] as having received wages in that year in excess of the annual contribution and benefit base.'' *Id.* Wages above this base are not subject to Social Security taxes, which reduces the amount paid on the employee's behalf. ''As a result, the [complainant's] eventual monthly benefit will be reduced, because participants receive a greater benefit when they have paid more into the system.'' *Id.* Finally, ''Social Security benefits are calculated using a progressive formula: Although a participant receives more in benefits when she pays more into the system, the rate of return diminishes at higher annual incomes.'' Therefore, a complainant may ''receive a smaller monthly benefit when a multi-year award is posted to one year rather than being allocated to the appropriate periods, even if Social Security taxes were paid on the entire amount.'' *Id.* The purpose of a make-whole remedy such as back pay is to put the complainant in the same position she would have been absent the prohibited retaliation. Should a complainant be required to suffer the above disadvantages, she would not truly be in the same position she would have been had she not been subjected to retaliation. As such, the Secretary agrees that requiring proper SSA allocation better achieves the make-whole purpose of a back pay award.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he or she received prior to termination, but not actually return to work. Such ''economic reinstatement'' is akin to an order for front pay and frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977, which protects miners from retaliation. 30 U.S.C. 815(c); *see, e.g., Sec'y of Labor ex rel. York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (ALJ June 26, 2001). Front pay has been recognized as a possible remedy in cases under the whistleblower statutes enforced by OSHA in circumstances where reinstatement would not be appropriate. *See, e.g., Moder* v. *Vill. of Jackson,* ARB Nos. 01–095, 02–039, 2003 WL 21499864, at *10 (ARB June 30, 2003) (under environmental whistleblower statutes, ''front pay may be an appropriate substitute when the parties prove the impossibility of a productive and amicable working relationship, or the company no longer has a position for which the complainant is qualified''); *Hobby* v. *Georgia Power Co.,* ARB Nos. 98–166, 98–169 (ARB Feb. 9, 2001), *aff'd sub nom. Hobby* v. *U.S. Dep't of Labor,* No. 01–10916 (11th Cir. Sept. 30, 2002) (unpublished) (noting circumstances where front pay may be available in lieu of reinstatement but ordering reinstatement); *Doyle* v. *Hydro Nuclear Servs.,* ARB Nos. 99–041, 99–042, 00–012, 1996 WL 518592, at *6 (ARB Sept. 6, 1996) (under ERA, front pay

appropriate where employer had eliminated the employee's position); *Michaud* v. *BSP Transport, Inc.,* ARB No. 97–113, 1997 WL 626849, at *4 (ARB Oct. 9, 1997) (under STAA, front pay appropriate where employee was unable to work due to major depression resulting from the retaliation); *Brown* v. *Lockheed Martin Corp.,* ALJ No. 2008–SOX–00049, 2010 WL 2054426, at *55–56 (ALJ Jan. 15, 2010) (noting that while reinstatement is the ''presumptive remedy'' under Sarbanes-Oxley, front pay may be awarded as a substitute when reinstatement is inappropriate). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause to believe that they were discharged in violation of FSMA. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. Neither an employer nor an employee has a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that immediate reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

Subpart B—Litigation

Section 1987.106 Objections to the Findings and the Preliminary Order and Requests for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

The timely filing of objections stays all provisions of the preliminary order, except for the portion requiring reinstatement. A respondent may file a motion to stay the Assistant Secretary's preliminary order of reinstatement with the Office of Administrative Law Judges. However, such a motion will be granted only based on exceptional circumstances. The Secretary believes that a stay of the Assistant Secretary's preliminary order of reinstatement under FSMA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay. If no timely objection to the Assistant Secretary's findings and/or preliminary order is filed, then the Assistant Secretary's findings and/or preliminary order become the final decision of the Secretary not subject to judicial review.

Section 1987.107 Hearings

This section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges as set forth in 29 CFR part 18 subpart A. This section provides that the hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. As noted in this section, formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

Section 1987.108 Role of Federal Agencies

The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings under FSMA. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although OSHA anticipates that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, multiple employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The FDA, if interested in a proceeding, also may participate as amicus curiae at any time in the proceedings.

Section 1987.109 Decision and Orders of the Administrative Law Judge

This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under FSMA. Specifically, the complainant must demonstrate (*i.e.,* prove by a preponderance of the evidence) that the protected activity was a ''contributing factor'' in the adverse action. *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) (''The term 'demonstrates' [under identical burden-shifting scheme in the Sarbanes-Oxley whistleblower provision] means to prove by a preponderance of the evidence.''). If the employee demonstrates that the alleged protected activity was a contributing factor in the adverse action, the employer, to escape liability, must demonstrate by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See* 21 U.S.C. 399d(b)(2)(C).

Paragraph (c) of this section further provides that OSHA's determination to dismiss the complaint without an investigation or without a complete investigation under section 1987.104 is not subject to review. Thus, section 1987.109(c) clarifies that OSHA's determinations on whether to proceed with an investigation under FSMA and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not remand cases to OSHA to conduct an investigation or make further factual findings. Paragraph (d) notes the remedies that the ALJ may order under FSMA and, as discussed under section 1987.105 above, provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be

compounded daily, and that the respondent will be required to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters. Paragraph (e) requires that the ALJ's decision be served on all parties to the proceeding, OSHA, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. Paragraph (e) also provides that any ALJ decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review.

Section 1987.110 Decision and Orders of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 14 days within which to petition the ARB for review of that decision. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. If the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard.

This section also provides that, based on exceptional circumstances, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under FSMA, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under FSMA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay.

If the ARB concludes that the respondent has violated the law, it will order the respondent to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of employment, and compensatory damages. At the request of the complainant, the ARB will assess against the respondent all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily, and the respondent will be required to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters. If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

Subpart C—Miscellaneous Provisions

Section 1987.111 Withdrawal of Complaints, Findings, Objections, and Petitions for Review; Settlement

This section provides the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It permits complainants to withdraw their complaints orally and provides that, in such circumstances, OSHA will confirm a complainant's desire to withdraw in writing. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1987.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ALJ or the ARB to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1987.113 Judicial Enforcement

This section describes the Secretary's power under FSMA to obtain judicial enforcement of orders and the terms of settlement agreements. FSMA expressly authorizes district courts to enforce orders, including preliminary orders of reinstatement, issued by the Secretary. *See* 21 U.S.C. 399d(b)(6) (''Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order.''). Specifically, reinstatement orders issued at the close of OSHA's investigation are immediately enforceable in district court pursuant to 21 U.S.C. 399d(b)(6) and (7). FSMA provides that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position. *See* 21 U.S.C. 399d(b)(3)(B)(ii). FSMA also provides that the Secretary shall accompany any reasonable cause finding that a violation occurred with a preliminary order containing the relief prescribed by subsection (b)(3)(B), which includes reinstatement where appropriate, and that any preliminary order of reinstatement shall not be stayed upon the filing of objections. *See* 21 U.S.C. 399d(b)(2)(B) (''The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.''). Thus, under FSMA, enforceable orders include preliminary orders that contain the relief of reinstatement prescribed by 21 U.S.C. 399d(b)(3)(B). This statutory interpretation is consistent with the Secretary's interpretation of similar language in the whistleblower provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121, and Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A. *See* Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010); *Solis* v. *Tenn. Commerce Bancorp, Inc.,* 713 F. Supp. 2d 701 (M.D. Tenn. 2010); *but see Bechtel* v. *Competitive Techs., Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006) (*decision vacated, appeal dismissed,* No. 06–2295 (4th Cir. Feb. 20, 2008)). FSMA also permits the person on whose behalf the order was

issued to obtain judicial enforcement of the order. *See* 21 U.S.C. 399d(b)(7).

Section 1987.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth provisions that allow a complainant to bring an original de novo action in district court, alleging the same allegations contained in the complaint filed with OSHA, under certain circumstances. FSMA permits a complainant to file an action for de novo review in the appropriate district court if there has been no final decision of the Secretary within 210 days of the filing of the complaint, or within 90 days after receiving a written determination. ''Written determination'' refers to the Assistant Secretary's written findings issued at the close of OSHA's investigation under section 1987.105(a). *See* 21 U.S.C. 399d(b)(4). The Secretary's final decision is generally the decision of the ARB issued under section 1987.110. In other words, a complainant may file an action for de novo review in the appropriate district court in either of the following two circumstances: (1) A complainant may file a de novo action in district court within 90 days of receiving the Assistant Secretary's written findings issued under section 1987.105(a), or (2) a complainant may file a de novo action in district court if more than 210 days have passed since the filing of the complaint and the Secretary has not issued a final decision. The plain language of 21 U.S.C. 399d(b)(4), by distinguishing between actions that can be brought if the Secretary has not issued a ''final decision'' within 210 days and actions that can be brought within 90 days after a ''written determination,'' supports allowing de novo actions in district court under either of the circumstances described above.

However, it is the Secretary's position that complainants may not initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint or within 90 days of the complainant's receipt of the Assistant Secretary's written findings. The purpose of the ''kick-out'' provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals. *See* 21 U.S.C. 399d(b)(5)(B) (providing that an order with respect to which review could have been obtained in the court of appeals shall not be subject to judicial review in any criminal or other civil proceeding).

Under FSMA, the Assistant Secretary's written findings become the final order of the Secretary, not subject to judicial review, if no objection is filed within 30 days. *See* 21 U.S.C. 399d(b)(2)(B). Thus, a complainant may need to file timely objections to the Assistant Secretary's findings, as provided for in § 1987.106, in order to preserve the right to file an action in district court.

This section also requires that, within seven days after filing a complaint in district court, a complainant must provide a file-stamped copy of the complaint to OSHA, the ALJ, or the ARB, depending on where the proceeding is pending. A copy of the complaint also must be provided to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. This provision is necessary to notify the agency that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed. This section also incorporates the statutory provisions which allow for a jury trial at the request of either party in a district court action, and which specify the remedies and burdens of proof in a district court action.

Section 1987.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of FSMA requires.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, section 1987.103) which was previously reviewed as a statutory requirement of FSMA and approved for use by the Office of Management and Budget (OMB), and was assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995. *See* Public Law 104–13, 109 Stat. 163 (1995). A non-material change has been submitted to OMB to include the regulatory citation.

V. Administrative Procedure Act

The notice and comment rulemaking procedures of section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This is a rule of agency procedure, practice, and interpretation within the meaning of that section, since it provides procedures for the handling of retaliation complaints. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments are not required for these regulations. Although this is a procedural rule not subject to the notice and comment procedures of the APA, OSHA is providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural and interpretative rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this interim final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Orders 12866 and 13563; Unfunded Mandates Reform Act of 1995; Executive Order 13132

The Department has concluded that this rule is not a ''significant regulatory action'' within the meaning of section 3(f)(4) of Executive Order 12866, as reaffirmed by Executive Order 13563, because it is not 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 Executive Order 12866.

Therefore, no regulatory impact analysis has been prepared.

The rule is procedural and interpretative in nature, and it is expected to have a negligible economic impact. For this reason, and the fact that no notice of proposed rulemaking has been published, no statement is required under Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.* Finally, this rule does not have ''federalism implications.'' The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of FSMA. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

List of Subjects in 29 CFR Part 1987

Administrative practice and procedure, Employment, Food safety, Investigations, Reporting and recordkeeping requirements, Whistleblower.

Authority and Signature

This document was prepared under the direction and control of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on February 7, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble, 29 CFR part 1987 is added to read as follows:

PART 1987—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 402 OF THE FDA FOOD SAFETY MODERNIZATION ACT

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.
1987.100 Purpose and scope.
1987.101 Definitions.
1987.102 Obligations and prohibited acts.
1987.103 Filing of retaliation complaint.
1987.104 Investigation.
1987.105 Issuance of findings and preliminary orders.

Subpart B—Litigation

1987.106 Objections to the findings and the preliminary order and requests for a hearing.
1987.107 Hearings.
1987.108 Role of Federal agencies.
1987.109 Decision and orders of the administrative law judge.
1987.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1987.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.
1987.112 Judicial review.
1987.113 Judicial enforcement.
1987.114 District court jurisdiction of retaliation complaints.
1987.115 Special circumstances; waiver of rules.

Authority: 21 U.S.C. 399d; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1987.100 Purpose and scope.

(a) This part sets forth the procedures for, and interpretations of, section 402 of the FDA Food Safety Modernization Act (FSMA), Public Law 111–353, 124 Stat. 3885, which was signed into law on January 4, 2011. Section 402 of the FDA Food Safety Modernization Act amended the Federal Food, Drug, and Cosmetic Act (FD&C), 21 U.S.C. 301 *et seq.,* by adding new section 1012. *See* 21 U.S.C. 399d. Section 1012 of the FD&C provides protection for an employee from retaliation because the employee has engaged in protected activity pertaining to a violation or alleged violation of the FD&C, or any order, rule, regulation, standard, or ban under the FD&C.

(b) This part establishes procedures under section 1012 of the FD&C for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. The rules in this part, together with those codified at 29 CFR part 18, set forth the procedures under section 1012 of the FD&C for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements. In addition, the rules in this part provide the Secretary's interpretations on certain statutory issues.

§ 1987.101 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under FSMA.

(b) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(c) *Complainant* means the employee who filed a complaint under FSMA or on whose behalf a complaint was filed.

(d) *Covered entity* means an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food.

(e) *Employee* means an individual presently or formerly working for a covered entity, an individual applying to work for a covered entity, or an individual whose employment could be affected by a covered entity.

(f) *FD&C* means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.,* which is chapter 9 of title 21.

(g) *FDA* means the Food and Drug Administration of the United States Department of Health and Human Services.

(h) *Food* means articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.

(i) *FSMA* means section 402 of the FDA Food Safety Modernization Act, Public Law 111–353, 124 Stat. 3885 (Jan. 4, 2011) (codified at 21 U.S.C. 399d).

(j) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(k) *Person* includes an individual, partnership, corporation, and association.

(l) *Respondent* means the employer named in the complaint who is alleged to have violated the FSMA.

(m) *Secretary* means the Secretary of Labor or person to whom authority under the FSMA has been delegated.

(n) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1987.102 Obligations and prohibited acts.

(a) No covered entity may discharge or otherwise retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary

course of the employee's duties (or any person acting pursuant to a request of the employee), has engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) An employee is protected against retaliation because the employee (or any person acting pursuant to a request of the employee) has:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of the FD&C or any order, rule, regulation, standard, or ban under the FD&C;

(2) Testified or is about to testify in a proceeding concerning such violation;

(3) Assisted or participated or is about to assist or participate in such a proceeding; or

(4) Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of the FD&C, or any order, rule, regulation, standard, or ban under the FD&C.

§ 1987.103 Filing of retaliation complaint.

(a) *Who may file.* An employee who believes that he or she has been retaliated against in violation of FSMA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov*.

(d) *Time for filing.* Within 180 days after an alleged violation of FSMA occurs, any employee who believes that he or she has been retaliated against in violation of that section may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint to be tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

§ 1987.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, OSHA will notify the respondent of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint. Such materials will be redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also notify the respondent of its rights under paragraphs (b) and (f) of this section and § 1987.110(e). OSHA will provide an unredacted copy of these same materials to the complainant (or the complainant's legal counsel if complainant is represented by counsel) and to the FDA.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent and the complainant each may submit to OSHA a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent and the complainant each may request a meeting with OSHA to present its position.

(c) OSHA will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to OSHA that are responsive to the complainant's whistleblower complaint at a time permitting the complainant an opportunity to respond. Before providing such materials to the complainant, OSHA will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also provide the complainant with an opportunity to respond to such submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a prima facie showing (*i.e.* a non-frivolous allegation) that a protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place within a temporal proximity of the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, further investigation of the complaint will not be conducted if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in paragraph (e)(4) of this section, OSHA will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1987.105, if OSHA has reasonable cause, on the basis of information gathered under the procedures of this

part, to believe that the respondent has violated FSMA and that preliminary reinstatement is warranted, OSHA will contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials, OSHA will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of OSHA's notification pursuant to this paragraph, or as soon thereafter as OSHA and the respondent can agree, if the interests of justice so require.

§ 1987.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of FSMA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The preliminary order will also require the respondent to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and, where appropriate, the preliminary order will be sent by certified mail, return receipt requested (or other means that allow OSHA to confirm receipt), to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the administrative law judge (ALJ), regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1987.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1987.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under FSMA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1987.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1987.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de

novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1987.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding and must be served with copies of all documents in the case. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of documents must be sent to OSHA and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, only upon request of OSHA, or where the Assistant Secretary is participating in the proceeding, or where service on OSHA and the Associate Solicitor is otherwise required by the rules in this part.

(b) The FDA, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at the FDA's discretion. At the request of the FDA, copies of all documents in a case must be sent to the FDA, whether or not the FDA is participating in the proceeding.

§ 1987.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither OSHA's determination to dismiss a complaint without completing an investigation pursuant to § 1987.104(e) nor OSHA's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order that will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the ALJ may award to the respondent a reasonable attorney fee, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board (ARB), U.S. Department of Labor. The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review.

§ 1987.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be

deemed to be 14 days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case the conclusion of the hearing is the date the motion for reconsideration is denied or 14 days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue a final order providing relief to the complainant. The final order will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1987.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying OSHA, orally or in writing, of his or her withdrawal. OSHA then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. OSHA will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1987.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, but before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if OSHA, the complainant, and the respondent agree to a settlement. OSHA's approval of a settlement reached by the respondent and the complainant demonstrates OSHA's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as appropriate.

(e) Any settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1987.113.

§ 1987.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1987.109 and 1987.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1987.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under FSMA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. The Secretary also may file a civil action seeking enforcement of the order in the United States district court for the District of Columbia.

§ 1987.114 District court jurisdiction of retaliation complaints.

(a) The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy, either:

(1) Within 90 days after receiving a written determination under § 1987.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(b) At the request of either party, the action shall be tried by the court with a jury.

(c) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1987.109. The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(2) The amount of back pay, with interest;

(3) Compensation for any special damages sustained as a result of the discharge or discrimination; and

(4) Litigation costs, expert witness fees, and reasonable attorney fees.

(d) Within seven days after filing a complaint in federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1987.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of the rules in this part, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of FSMA requires.

[FR Doc. 2014–03164 Filed 2–12–14; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0552, FRL–9903–94-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Construction Permit Program Fee Increases; Construction Permit Regulation of $PM_{2.5}$; Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revision packages submitted by the State of Colorado on June 18, 2009 and May 25, 2011. EPA approves the June 18, 2009 submittal revisions, which supersede revisions submitted on June 11, 2008, to Regulation 3, Part A, Section VI.D.1., regarding construction permit processing fees. EPA approves Colorado's May 25, 2011 submittal, which addresses regulation of fine particulate matter ($PM_{2.5}$) under Colorado's construction permit program. EPA also approves minor editorial changes to Regulation 3, Parts A, B, and D in the May 25, 2011 submittal. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective March 17, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2013–0552. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6022, *komp.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words or initials *APEN* mean or refer to Air Pollution Emission Notice.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The words *State* or *Colorado* mean the State of *Colorado,* unless the context indicates otherwise.

(vi) The initials *NAAQS* mean or refer to national ambient air quality standards.

(vii) The initials *NSR* mean or refer to New Source Review.

(viii) The initials *PM* mean or refer to particulate matter.

(ix) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).

(x) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xi) The initials *SIP* mean or refer to State Implementation Plan.

(xii) The initials *tpy* mean or refer to tons per year.

I. Background Information

On September 6, 2013, 78 FR 76781, EPA published a notice of proposed rulemaking (NPR) for action on certain SIP submittals by the State of Colorado. The NPR proposed approval of revisions to Regulation 3, Part A, Section VI.D.1. to the extent the revisions reflect changes to construction permit processing fees as set forth in Colorado Revised Statute Section 27–7–114.7.

In addition, the NPR proposed to approve revisions to Parts A of Regulation 3 to add $PM_{2.5}$ to the definitions of ''air pollutant'' and ''criteria pollutant,'' and to approve revisions to Part B of Regulation 3 to regulate $PM_{2.5}$ in the State's construction permit program, including $PM_{2.5}$ thresholds. We also proposed to approve Colorado's reinstatement of volatile organic compound (VOC) sources to reasonably available control technology (RACT) requirements in Part B. Finally, minor editorial changes made throughout Regulation 3, Parts A, B, and D were proposed for approval.

The formal SIP revisions were submitted by the State of Colorado on June 11, 2008, June 18, 2009 and May 25, 2011. The State's June 11, 2008 and June 18, 2009 submittals contained permitting fee increases in Part A, Section VI.D.1. of Regulation 3. The State increased its fees with the 2008 submittal to $17.97 per ton for regulated pollutants and $119.96 per ton for

hazardous air pollutants. In the State's 2009 submittal, these fees were increased to $22.90 and $152.10, respectively. Section VI.D.1. also requires permit processing fees to be collected. The 2009 submittal was adopted by the State on September 18, 2008 and became effective on October 30, 2008.

EPA determined that both submittals contain increased emission fees that appear to be for the purpose of implementing and enforcing the State's Title V operating permit program. These emission fee increases are non-SIP regulatory fees and therefore any increases are outside the scope of the SIP revision process. Conversely, the permit processing fees, with respect to the processing of construction permits, are appropriate for approval into the SIP. (see, CAA Section 110(a)(2)(L)(i)). Therefore, we are approving the submitted provisions only to the extent that they impose fees on processing of construction permits.

The May 25, 2011 submittal revised the definition of ''air pollutant'' in Part A of Regulation Number 3 to add $PM_{2.5}$. Consistent with EPA's 2008 $PM_{2.5}$ New Source Review (NSR) Implementation Rule (73 FR 28321), the submittal revised the definition of ''criteria pollutant'' in Part A to include $PM_{2.5}$ and to recognize sulfur dioxide and nitrogen oxides as precursors to $PM_{2.5}$. With these changes, $PM_{2.5}$ and its precursors are regulated under Colorado's construction permit program in Part B of Regulation Number 3.[1]

In areas which are nonattainment for any criteria pollutant, facilities with total annual uncontrolled emissions of $PM_{2.5}$ less than one ton per year (tpy) are exempt; in areas that are in attainment for all criteria pollutants, facilities with total annual uncontrolled emissions of $PM_{2.5}$ less than five tpy are exempt. These levels are identical to the existing PM_{10} permit thresholds. The State also retained the existing thresholds for the pollutants identified as $PM_{2.5}$ precursors, sulfur dioxide and nitrogen oxides: five tpy in areas which are nonattainment for any criteria pollutants, and ten tpy in areas that are in attainment for all criteria pollutants. The State adopted the revisions on February 21, 2008 and became effective on April 30, 2008. EPA proposed to approve these revisions to Parts A and B.

In addition, in paragraph III.D.2 of Part B, which contains RACT requirements for certain new or modified minor sources, Colorado added sources of VOCs. This responded to Colorado's previous removal of these sources, which would have relaxed the stringency of the SIP. As Colorado's reinstatement of VOC sources restores this provision to its previous state, we proposed to approve the change.

The cover letter to Colorado's May 25, 2011 submittal identified the specific regulations the State requested that EPA approve into the SIP, including minor editorial changes in Parts A, B, and D of Regulation 3. These parts of Colorado's Regulation 3 address the State's permitting and Prevention of Significant Deterioration (PSD) program. However, editorial changes were also made to Part C of the regulation. Part C is the State's Title V permitting program and is not part of the SIP. EPA takes no action on these non-SIP regulatory changes in Part C.

II. Response to Comments

EPA received no comments regarding our proposed approval of Colorado's revisions to its Regulation 3.

III. EPA's Evaluation of Part D Revisions to Regulation Number 3

The May 25, 2011 submittal contains revisions to the Part D portion of the State's Regulation 3 for major stationary sources subject to NSR and PSD. As discussed in earlier notices regarding revisions to Part D of Colorado's Regulation Number 3, for example 77 FR 1027 (Jan. 9, 2012), Colorado reorganized Regulation No. 3 in previous SIP submissions by moving much of the previously approved language from other sections of Regulation 3 into newly created Part D. The submissions then incorporated EPA's December 31, 2002 NSR Reform rule (67 FR 80186) into Part D, applying the reforms to both the State's PSD and nonattainment NSR permit programs. In its submissions, Colorado distinguished the revised language that incorporated NSR Reform from the language for the existing PSD and NSR programs (as reorganized into part D) by italicizing language that was to be added to the existing programs and by underlining language that was to be removed from the existing programs. Colorado's submissions indicated that the addition of the italicized language and removal of the underlined language was to become effective only after EPA approved those changes into Colorado's SIP. The same convention regarding italicized and underlined language applies to the May 25, 2011 submittal.

EPA completed its approval of Colorado's NSR Reform revisions on April 10, 2012. 77 FR 21453. EPA also has also completed approval of subsequent revisions to Part D that renumbered Part D to reflect the removal of provisions that had been vacated or remanded by the U.S. Court of Appeals for the District of Columbia. 78 FR 5140 (Jan. 24, 2013). As a result, the italicized language in Part D is effective and the underlined language is removed. Our approval of editorial changes to Part D reflects this. In addition, on September 23, 2013, EPA approved more recent revisions to certain provisions in Part D. See 78 FR 58186 (Sept. 23, 2013). These provisions, addressing $PM_{2.5}$ precursors and increments, were submitted by Colorado on May 11, 2012 and May 13, 2013, respectively. As those two submittals were made after the May 25, 2011 submittal we are approving today, the provisions we approved on September 23, 2013 already reflect and supersede the editorial changes made to the corresponding provisions in the State's May 25, 2011 submittal. We are therefore not reapproving those provisions already approved in our September 23, 2013 action.

In addition, in a previous final rule regarding Regulation Number 3, 76 FR 61054 (Oct. 3, 2011), we partially disapproved Colorado's SIP revisions for air pollutant emission notice (APEN) requirements and exemptions. In a subsequent submittal, dated May 11, 2012, Colorado repealed certain APEN provisions that we disapproved on October 3, 2011. As a result, we consider those provisions effectively withdrawn from the May 25, 2011 submittal.

IV. Final Action

We are approving revisions to Regulation 3 as submitted on June 18, 2009, and May 25, 2011. EPA is approving permitting fee revisions in the June 18, 2009 submittal to Part A, Section VI.D.1. of Regulation 3, to the extent that the revisions apply to construction permits. The June 18, 2009 submittal supersedes the June 11, 2008 submittal, which also revised fee provisions.

The May 25, 2011 submittal revised the definition of ''air pollutant'' in Part A of Regulation Number 3 to add $PM_{2.5}$ and the definition of ''criteria pollutant'' in Part A to include $PM_{2.5}$ and to recognize sulfur dioxide and nitrogen oxides as precursors to $PM_{2.5}$. The submittal also added $PM_{2.5}$ emission thresholds for exemptions from the construction permit requirements in Part B. In areas which are

[1] On September 23, 2013 (78 FR 58186), we approved revisions to Colorado's PSD program in Part D of Regulation Number 3 to address the requirements for PSD programs set out in the 2008 $PM_{2.5}$ NSR Implementation Rule, including recognition of $PM_{2.5}$ precursors in the definition of ''regulated NSR pollutant.''

nonattainment for any criteria pollutant, facilities with total annual uncontrolled emissions of $PM_{2.5}$ less than one tpy are exempt; in areas that are in attainment for all criteria pollutants, facilities with total annual uncontrolled emissions of $PM_{2.5}$ less than five tpy are exempt. The State also retained the existing thresholds for the pollutants identified as $PM_{2.5}$ precursors, sulfur dioxide and nitrogen oxides: Five tpy in areas which are nonattainment for any criteria pollutants, and ten tpy in areas that are in attainment for all criteria pollutants.

In addition, in paragraph III.D.2 of Part B, which contains RACT requirements for certain new or modified minor sources, Colorado added sources of VOCs. EPA approves these revisions to Parts A and B.

The May 25, 2011 submittal included minor editorial changes in Parts A, B, and D of Regulation 3. We are approving these changes. For reasons discussed in the NPR, 78 FR 76871, EPA will not act on editorial changes made to Part C of the regulation. Part C is the State's Title V operating permit program and is not part of the SIP.

V. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 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 USC 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 (Public Law 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 USC 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2014. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 8, 2013.

Howard M. Cantor,

Deputy Regional Administrator, Region 8.

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 G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(127) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(127) On June 11, 2008, June 18, 2009, and May 25, 2011 the State of Colorado submitted revisions to 5 CCR 1001–5, Regulation 3, Parts A, B, and D. The June 11, 2008 and June 18, 2009 submittals incorporated changes to fee amounts which the State charges for the processing and annual renewal of air emission permits. These fees support Colorado's construction and operating permit programs. EPA is approving fees submitted by the State on June 18, 2009, which superseded changes submitted on June 11, 2008, to the extent that the fees support the construction permit program. EPA is also approving revisions made to 5 CCR 1001–5, Regulation 3, Parts A, B, and D submitted by the State on May 25, 2011 for Parts A, B and D.

(i) Incorporation by reference.

(A) 5 CCR 1001–5, Regulation Number 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part A, *Concerning General Provisions Applicable to Reporting and Permitting,* VI. *Fees,* VI.D. *Fee Schedule,* VI.D.1.; adopted September 18, 2008 and effective October 30, 2008.

(B) 5 CCR 1001–5, Regulation Number 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part A, *Concerning General Provisions Applicable to Reporting and Permitting,* except Section II., *Air Pollutant Emission*

Notice (APEN) Requirements, II.D., *Exemptions from Air Pollutant Emission Notice Requirements,* Section II.D.1.sss, II.D.1.ttt, II.D.1.xxx, and II.D.1.ffff; and Section VI., *Fees,* VI.D., *Fee Schedule,* VI.D.1., adopted February 21, 2008 and effective April 30, 2008.

(C) 5 CCR 1001–5, Regulation Number 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part B, *Concerning Construction Permits;* adopted February 21, 2008 and effective April 30, 2008.

(D) 5 CCR 1001–5, Regulation Number 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part D, *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration;* adopted February 21, 2008 and effective April 30, 2008:

(*1*) Excluding underlined text in Section II, *Definitions,* Section II.A.1., *Actual Emissions,* II.A.1.a., II.A.1.c., and II.A.1.e.; II.A.8., *Best Available Control Technology (BACT),* first paragraph; II.A.20., *Lowest Achievable Emissions Rate (LAER),* II.A.20.b.; II.A.22., *Major Modification,* introductory paragraph; II.A.24., *Major Stationary Source,* II.A.24.b.; II.A.26., *Net Emissions Increase,* II.A.26.a.(i) and II.A.26.g.(iii); II.A.40.5, *Representative Actual Annual Emissions,* introductory paragraph and II.A.40.5(a); and, VI. *Requirements applicable to attainment and unclassifiable areas and pollutants implemented under Section 110 of the Federal Act (Prevention of Significant Deterioration Program),* VI.A. *Major Stationary Sources and Major Modifications,* VI.A.1., *Control Technology Review,* VI.A.1.c.; and

(*2*) With the following exceptions: Section II, *Definitions,* Section II.A.5., *Baseline Area,* II.A.5.a. and II.A.5.b.; Section II.A.23., *Major Source Baseline Date;* II.A.25., *Minor Source Baseline Date,* II.A.25.a., II.A.25.b., introductory text, and II.A.25.b(i); II.A.38, *Regulated NSR Pollutant,* II.A.38.c.; II.A.42., *Significant,* II.A.42.a.; Section X, *Air Quality Limitations,* X.A., *Ambient Air Increments,* X.A.1.

[FR Doc. 2014–03114 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919470–3513–02]

RIN 0648–XD122

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Closure of the Penaeid Shrimp Fishery Off South Carolina

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the penaeid shrimp commercial sector to trawling, *i.e.,* brown, pink, and white shrimp, in the exclusive economic zone (EEZ) off South Carolina in the South Atlantic. This closure is necessary to protect the spawning stock of white shrimp that has been subject to unusually cold weather conditions where state water temperatures have been 9 °C (48 °F), or less, for at least 7 consecutive days.

DATES: The closure is effective 12:01 a.m., local time, February 13, 2014, until the effective date of a notification of opening which NOAA will publish in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kate Michie, 727–570–5305; email: *Kate.Michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 9 to the FMP revised the criteria and procedures by which a South Atlantic state may request a concurrent closure of the EEZ to the harvest of penaeid shrimp when state waters close as a result of severe winter weather (78 FR 35571, June 13, 2013). Under 50 CFR 622.206(a), NMFS may close the EEZ adjacent to South Atlantic states that have closed their waters to harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather or when applicable state water temperatures are 9 °C (48 °F), or less, for at least 7 consecutive days. Consistent with those procedures and criteria, the state of South Carolina has determined, based on the information from standardized assessments, that unusually cold temperatures have occurred and that state water temperatures have been 9 °C (48 °F), or less, for at least 7 consecutive days and that these cold weather conditions pose a risk to the condition and vulnerability of overwintering white shrimp populations in its state waters. South Carolina closed its waters on January 13, 2014, to the harvest of brown, pink, and white shrimp, and has requested that the Council and NMFS implement a concurrent closure of the EEZ off South Carolina. In accordance with the procedures described in the FMP, the state of South Carolina submitted a letter to the NMFS Regional Administrator (RA) on February 5, 2014, requesting that NMFS close the EEZ adjacent to South Carolina to penaeid shrimp harvest as a result of severe cold weather conditions.

NMFS has determined that the recommended Federal closure conforms with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, and, therefore, implements the Federal closure effective 12:01 a.m., local time, February 13, 2014. The closure will be effective until the ending date of the closure in South Carolina state waters, but may be ended earlier based on a request from the state. In no case will the Federal closure remain effective after May 31, 2014. NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

During the closure, as specified in 50 CFR 622.206(a)(2), no person may: (1) Trawl for brown, pink, or white shrimp in the EEZ off South Carolina; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off South Carolina unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck; or (3) for a vessel trawling within 25 nautical miles of the baseline from which the territorial sea is measured, use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

Classification

The RA, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the spawning stock of white shrimp off South Carolina and is

consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.206(a) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the penaeid shrimp commercial sector in the EEZ off South Carolina constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Providing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the severely depleted spawning stock of white shrimp off South Carolina. Prior notice and opportunity for public comment would require time and would potentially further harm the spawning stock that has been impacted due to cold weather.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2014.

Sean F. Corson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0960; Airspace Docket No. 13–AGL–17]

RIN 2120–AA66

Proposed Modification and Revocation of Air Traffic Service (ATS) Routes; Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify three jet routes and four VOR Federal airways and to remove three jet routes in the northcentral United States. The FAA is proposing this action due to the scheduled decommissioning of the Peck, MI, VHF Omnidirectional Range (VOR), which provides navigation guidance for portions of the affected routes. The Tactical Air Navigation (TACAN) facility will remain in service. This action would promote the safety and efficient management of aircraft within the National Airspace System.

DATES: Comments must be received on or before March 31, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0960 and Airspace Docket No. 13–AGL–17 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0960 and Airspace Docket No. 13–AGL–17) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0930 and Airspace Docket No. 13–AGL–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Peck, MI (ECK), VOR is being decommissioned due to signal interference impacts to the facility created by a power line project that is being constructed in the proximity of the ECK VOR; however, the collocated TACAN facility will remain in service. The power line project is a State of Michigan initiative to provide renewable energy to the State by 2015 with a plan to construct power line towers and route transmission lines within 1,400 feet of the ECK VOR facility. Modeling impacts of the proposed power line construction project on the ECK VOR determined that the project will cause bearing errors in excess of flight check tolerances at multiple azimuths around the facility, thereby compromising the integrity of the existing airways supported by the ECK VOR. A determination has been made to permanently decommission the facility due to the projected signal degradation from the planned power line nearby. Additionally, the ECK VOR is not on the list of VORs planned for retention in the VOR Minimum Operational Network (MON). As a result, the ATS routes that utilize the ECK VOR must be amended.

The affected routes are: jet route J–16, J–38, J–94, J–546, J–551, and J–553, and VOR Federal airways V–84, V–216, V–320, and V–337. With the decommissioning of the ECK VOR, ground-based navigation aid (NAVAID) coverage is insufficient to enable the continuity of all the airways. Therefore, the proposed modifications to jet routes J–16 and J–94, and VOR Federal airways V–84 and V–337 would result in a gap in the route structures. To overcome the gaps created in the route structures, air traffic control (ATC) would either provide radar vectoring or reroute affected aircraft using the remaining

route structure, as determined appropriate.

This action also proposes to modify V–216 further by removing the route segment that is charted unusable from the Janesville, WI (JVL), VOR to the Muskegon, MI (MKG), VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) facility, as well as removing the route segment from MKG to the Saginaw, MI (MBS), VOR due to low usage and large portions of V–216 to the west and east being removed. The route segment from JVL to MKG has been unusable since 2009 as a result of the MKG radial supporting V–216 failing flight inspection and the FAA being unable to resolve the associated MKG VOR radial restrictions. The route segment from MKG to MBS is also proposed to be removed due to its limited use (less than six aircraft per day, on average), and being bracketed by substantial airway segments to the west and east being removed. As mentioned previously, ATC would either provide radar vectoring or reroute affected aircraft using remaining route structure to overcome this gap in V–216.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend jet routes J–16, J–38, and J–94, and VOR Federal airways V–84, V–216, V–320, and V–337. The FAA also proposes to remove jet routes J–546, J–551, and J–553. The scheduled decommissioning of the ECK VOR facility has made this action necessary. The proposed route changes are outlined below.

J–16: J–16 currently extends between Battle Ground, WA (BTG) and Boston, MA (BOS), excluding the airspace within Canada. The FAA would eliminate the part of the route between Badger, WI (BAE) and London, ON, Canada (YXU). The unaffected portions of the existing route will remain as charted in the two remaining segments.

J–38: J–38 currently extends between Duluth, MN (DLH) and Peck, MI (ECK). The FAA would eliminate the part of the route between Green Bay, WI (GRB) and ECK. The unaffected portion of the existing route will remain as charted.

J–94: J–94 currently extends between Oakland, CA (OAK) and Boston, MA (BOS), excluding the airspace within Canada. The FAA would eliminate the part of the route between Flint, MI (FNT) and London, ON, Canada (YXU). The unaffected portions of the existing route will remain as charted in the two remaining segments.

V–84: V–84 currently extends between Northbrook, IL (OBK) and Syracuse, NY (SYR), excluding the airspace within Canada. The FAA would eliminate the part of the route between Flint, MI (FNT) and London, ON, Canada (YXU). The unaffected portions of the existing route will remain as charted in the two remaining segments.

V–216: V–216 currently extends between Lamar, CO (LAA) and Toronto, ON, Canada (YYZ), excluding the airspace within Canada. The FAA would eliminate the part of the route between Janesville, WI (JVL) and YYZ. The unaffected portions of the existing route will remain as charted in the two remaining segments.

V–320: V–320 currently extends between Pellston, MI (PLN) and Toronto, ON, Canada (YYZ), excluding the airspace within Canada. The FAA would eliminate the part of the route between Saginaw, MI (MBS) and YYZ. The unaffected portions of the existing route will remain as charted in the two remaining segments.

V–337: V–337 currently extends between the intersection of the Briggs, OH (BSV), 077° and Youngstown, OH (YNG), 177° radials and White Cloud, MI (HIC). The FAA would eliminate the part of the route between Akron, OH (ACO) Saginaw, MI (MBS). The unaffected portions of the existing route will remain as charted in the two remaining segments.

The navigation aid radials cited in the proposed route descriptions, below, are unchanged from the existing routes and stated relative to True north.

Jet routes are published in paragraph 2004 and VOR Federal airways are published in paragraph 6010(a), respectively, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The jet routes and VOR Federal airways listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013 and effective September 15, 2013, is amended as follows:

Paragraph 2004 Jet Routes

J–16 [Amended]

From Battle Ground, WA; Pendleton, OR; Whitehall, MT; Billings, MT; Dupree, SD; Sioux Falls, SD; Mason City, IA; to Badger, WI. From London, ON, Canada; Buffalo, NY;

Albany, NY; to Boston, MA; excluding the airspace within Canada.

* * * * *

J–38 [Amended]

From Duluth, MN; to Green Bay, WI.

* * * * *

J–94 [Amended]

From Oakland, CA; Manteca, CA; INT Manteca 047° and Mustang, NV, 208° radials; to Mustang; Lovelock, NV; Battle Mountain, NV; Lucin, UT; Rock Springs, WY; Scottsbluff, NE; O'Neill, NE; Fort Dodge, IA; Dubuque, IA; Northbrook, IL; Pullman, MI; to Flint, MI. From London, ON, Canada; Buffalo, NY; Albany, NY; to Boston, MA; excluding the airspace within Canada.

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J–546 [Removed]

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J–551 [Removed]

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J–553 [Removed]

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Paragraph 6010 Domestic VOR Federal Airways

V–84 [Amended]

From Northbrook, IL; Pullman, MI; Lansing, MI; to Flint, MI. From London, ON, Canada; Buffalo, NY; Geneseo, NY; INT Geneseo 091° and Syracuse, NY, 240° radials; to Syracuse; excluding the airspace within Canada.

* * * * *

V–216 [Amended]

From Lamar, CO; Hill City, KS; Mankato, KS; Pawnee City, NE; Lamoni, IA; Ottumwa, IA; Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; to Janesville.

* * * * *

V–320 [Amended]

From Pellston, MI; Traverse City, MI; Mount Pleasant, MI; to Saginaw, MI.

* * * * *

V–337 [Amended]

From INT Briggs, OH, 077° and Youngstown, OH, 177° radials; to Akron, OH. From Saginaw, MI; Mount Pleasant, MI; to White Cloud, MI.

* * * * *

Issued in Washington, DC, on February 10, 2014.

Ellen Crum,

Acting Manager, Airspace Policy & Regulations Group.

[FR Doc. 2014–03181 Filed 2–12–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–381]

Schedules of Controlled Substances: Placement of Suvorexant into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to place the substance suvorexant ([(7*R*)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl][5-methyl-2-(2*H*-1,2,3-triazol-2-yl)phenyl]methanone), including its salts, isomers, and salts of isomers, into schedule IV of the Controlled Substances Act (CSA). This proposed scheduling action is pursuant to the CSA which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule IV controlled substances on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities, or possess), or propose to handle suvorexant.

DATES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Comments must be submitted electronically or postmarked on or before March 17, 2014. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' 21 CFR 1300.01, may file a request for hearing or waiver of participation pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45, 1316.47, 1316.48, or 1316.49, as applicable. Requests for hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before March 17, 2014.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–381'' on all electronic and written correspondence. The DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Go to *www.regulations.gov* and follow the on-line instructions at that site for submitting comments. An electronic copy of this document and supplemental information to this proposed rule are also available at *www.regulations.gov* for easy reference. Paper comments that duplicate electronic submissions are not necessary. All comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments, in lieu of electronic comments, they should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, VA 22152. All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Ruth A. Carter, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record and will be made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the

phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form.

The Freedom of Information Act (FOIA) applies to all comments received. If you wish to personally inspect the comments and materials received or the supporting documentation the DEA used in preparing the proposed action, these materials will be available for public inspection by appointment. To arrange a viewing, please see the **FOR FURTHER INFORMATION CONTACT** paragraph above.

Request for Hearing, Notice of Appearance at Hearing, or Waiver of Participation in Hearing

Pursuant to the provisions of the CSA, 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316 subpart D. In accordance with 21 CFR 1308.44(a)–(c), requests for a hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' 21 CFR 1300.01. Requests for hearing and notices of appearance must conform to the requirements of 21 CFR 1308.44(a) or (b), and 1316.47 or 1316.48 as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c) and 1316.49, including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of a hearing held in relation to this rulemaking is restricted to: ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of [Title 21] for the schedule in which such drug is to be placed. . . .'' Requests for a hearing, notices of appearance at a hearing, and waivers of an opportunity for a hearing or to participate in a hearing must be submitted to the DEA using the address information provided above.

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, controlled substances are classified into one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by [21 U.S.C. 812(b)] for the schedule in which such drug is to be placed. . . .'' Pursuant to 28 CFR 0.100(b), the Attorney General has delegated this scheduling authority to the Administrator of the DEA who has further delegated this authority to the Deputy Administrator of the DEA under 28 CFR 0.104.

The CSA provides that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of Health and Human Services (HHS); or (3) on the petition of any interested party. 21 U.S.C. 811(a). If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions of schedule IV controlled substances for any person who handles suvorexant.

Background

Suvorexant ([(7*R*)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl][5-methyl-2-(2*H*-1,2,3-triazol-2-yl)phenyl]methanone), also known as MK–4305, is a new chemical entity developed for the treatment of insomnia. Suvorexant is a novel, first in class, orexin receptor antagonist with a mechanism of action distinct from any marketed drug. It acts via inhibition of the orexin 1 (OX1) and orexin 2 (OX2) receptors. In pharmacological activity studies, suvorexant functioned as an antagonist as demonstrated by its ability to block agonist-induced calcium (Ca^{2+}) release.

Proposed Determination to Schedule Suvorexant

Pursuant to 21 U.S.C. 811(a), proceedings to add a drug or substance to those controlled under the CSA may be initiated by request of the Secretary of the HHS.[1] On June 27, 2013, the HHS provided the DEA with a scientific and medical evaluation document prepared by the FDA entitled ''Basis for the Recommendation to Place Suvorexant in Schedule IV of the Controlled Substances Act.'' Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of suvorexant as a new drug, along with the HHS' recommendation to control suvorexant under schedule IV of the CSA.

In response, the DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, and all other relevant data, and completed its own eight-factor review document pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as

[1] As set forth in a memorandum of understanding entered into by the HHS, the Food and Drug Administration, (FDA), and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of the NIDA. 50 FR 9518, Mar. 8, 1985. In addition, because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this document, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

considered by the DEA in its proposed scheduling action. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting and Related Material'' in the public docket for this proposed rule at *www.regulations.gov*, under Docket Number ''DEA–381.'' Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *The Drug's Actual or Relative Potential for Abuse:* Suvorexant is a new chemical entity that has not been marketed in the United States or any other country. As such, there is no information available detailing actual abuse of suvorexant. However, the legislative history of the CSA offers the following criterion for assessing a new drug or substance's potential for abuse:

> The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.[2]

As described further below, there is strong evidence that suvorexant produces behavioral effects in humans and in animals that are similar to those produced by zolpidem (schedule IV).

With a mechanism of action that is distinct from any other marketed drug, including those marketed for insomnia (i.e., schedule IV benzodiazepines, and non-benzodiazepine hypnotics such as zolpidem (schedule IV), eszopiclone[3] (schedule IV), and zaleplon (schedule IV)), suvorexant acts as an antagonist at the OX1 and OX2 receptors and produces sedative and sleep promoting effects in humans.

In a human abuse potential study in subjects with histories of recreational sedative use, suvorexant produced reinforcing subjective effects similar to zolpidem (schedule IV). Doses of 40, 80, and 150 mg of suvorexant were compared to 15 and 30 mg doses of zolpidem (schedule IV). On the visual analog scale (VAS), suvorexant produced '' 'at the moment' Drug Liking'' and ''High and Good,'' effects statistically indistinguishable from zolpidem (schedule IV). Suvorexant also produced effects similar to zolpidem (schedule IV) in ''Overall Drug Liking,'' ''Take Drug Again,'' ''Any Drug Effect,'' assessments of subjective drug value, and overall familiarity measures. Additionally, on the Bowdle VAS (a measure of perceptual and hallucinogenic effects) suvorexant produced effects statistically similar to zolpidem (schedule IV). Suvorexant produced less dysphoria and adverse effects than zolpidem (schedule IV), suggesting that suvorexant may have an increased abuse potential relative to zolpidem (schedule IV). Measures to evaluate cognitive and psychomotor impairment (e.g., reaction time, attention, and vigilance) showed that suvorexant produced levels of impairment that were similar to the low dose (15 mg) of zolpidem (schedule IV). These data suggest that zolpidem (schedule IV) and suvorexant present a similar risk to the public health, and that suvorexant impairs cognition at both therapeutic (e.g., 40 mg) and supratherapeutic doses. As the dose of suvorexant increased, there was no increase in drug effects. This fact is especially important because the lowest dose of suvorexant examined in the human abuse potential study (40 mg) is the maximum planned therapeutic dose—suggesting that therapeutic doses of suvorexant (e.g., 40 mg) will have significant abuse liability and produce cognitive and psychomotor impairment.

These data suggest that suvorexant and zolpidem (schedule IV) have a similar abuse potential. The similarities between suvorexant and zolpidem (schedule IV) indicate that there will be significant diversion of these substances from legitimate channels, and significant use contrary to or without medical advice. In addition, as discussed in Factor 3, the long half-life of suvorexant may be a critical factor in the drug's safety profile as suvorexant's duration of action may create significant hazards to the health of the user or to the safety of the community, and result in ''next day'' effects in patients.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* The orexin signaling system was discovered in 1998 and has been implicated in numerous physiological functions involving the central nervous system (CNS) such as sleep and wakefulness, appetite/metabolism, stress response, reward/addiction, and analgesia. Orexin A and orexin B are peptide neurotransmitters produced through cleavage of a preprohormone. These neurotransmitters bind with a high degree of selectivity to two different G-protein coupled receptors (GPCR's), namely OX1 and OX2. These orexin receptors are broadly expressed in cortical, thalamic, and hypothalamic neuronal circuits. Suvorexant blocks the wakefulness promoting effects of the orexins, facilitating the sleep process. In pharmacological studies, suvorexant functioned as an antagonist as demonstrated by its ability to block agonist-induced calcium (Ca^{2+}) release.

In receptor binding studies to determine the binding affinity as assessed by the ability of suvorexant to displace a reference compound (expressed as K_i value), suvorexant produced K_i values of 0.55 nM and 0.35 nM for the OX1 and OX2 receptors, indicating a high affinity for these receptor subtypes. In *in vitro* functional studies, suvorexant blocked the effects of orexin receptor agonist in cells expressing OX1 and OX2 receptors. The concentrations of suvorexant inhibiting 50 percent of response (known as IC_{50}) were 49.9 nM at the OX1 receptors and 54.8 nM at OX2 receptors.

Like zolpidem, suvorexant (10, 20, 30 and 60 mg/kg) dose dependently reduced locomotor activity in rats, an expected characteristic of a sedative drug. Although rhesus monkeys trained to self-administer methohexital (schedule IV) did not self-administer suvorexant, the predictive validity of self-administration studies in evaluating the abuse potential of drugs acting via orexin receptors is unknown.

A human abuse potential study was performed to assess the abuse potential of suvorexant in human participants. The study demonstrated that suvorexant and zolpidem (schedule IV) produce similar reinforcing effects and have a similar potential for abuse in recreational drug users. Results showed that suvorexant produced effects statistically indistinguishable from zolpidem (schedule IV) in primary and secondary outcome measures. There was no increase in drug effects as the dose of suvorexant increased. This is an important observation, as the low dose of suvorexant (40 mg) in the human abuse potential study is the maximum proposed therapeutic dose. These data suggest that the maximum therapeutic dose of suvorexant (40 mg) was shown to produce cognitive and psychomotor impairment and will have a significant liability for abuse.

Results from another study measuring the effects of suvorexant (10, 50, and 100 mg) on sleep parameters and next-day residual effects demonstrated that the mid and high doses of suvorexant (50 and 100 mg) produced effects on next-day assessments of psychomotor performance and subjective effects. These results may be clinically relevant

[2] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); *as reprinted in* 1970 U.S.C.C.A.N. 4566, 4601.

[3] Eszopiclone is the dextrarotory stereoisomer, i.e., an isomer, of zopiclone (schedule IV).

as the residual effects may be present in the morning following an evening administration (10 hours post-dose).

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* The chemical name for suvorexant is [(7*R*)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl][5-methyl-2-(2*H*-1,2,3-triazol-2-yl)phenyl]methanone. It is a white to off-white powder. Other chemical names include: 1) Methanone, [(7*R*)-4-(5-chloro-2-benzoxazolyl)hexahydro-7-methyl-1*H*-1,4-diazepin-1-yl][5-methyl-2-(2*H*-1,2,3-triazol-2-yl)phenyl]-; 2) [(7*R*)-4-(5-chlorobenzoxazol-2-yl)-7-methylhexahydro-1*H*-1,4-diazepin-1-yl][5-methyl-2-(2*H*-1,2,3-triazol-2-yl)phenyl]methanone; 3) MK–4305; and 4) DORA–22. The Chemical Abstract Services number (CAS #) of suvorexant is: 1030377–33–3. At 25 °C, suvorexant is insoluble in water, soluble in methanol, very slightly soluble in heptane, and soluble in isopropyl acetate. The pH of a saturated aqueous solution of suvorexant was 8.6. Suvorexant has a molecular formula of $C_{23}H_{23}ClN_6O_2$ and a molecular weight of 450.921 g. Suvorexant has a distinct chemical structure that is different from that of other sedative hypnotics such as the benzodiazepines (schedule IV).

There are several metabolites of suvorexant, although none appear to contribute significantly to its pharmacodynamic effects or abuse potential. Eight metabolites were detected in the plasma of healthy males administered radiolabeled suvorexant, with two of the metabolites present at concentrations great than 10 percent (M9 and M12). After oral administration of 15–40-mg, peak plasma concentrations (i.e., T_{max}) of suvorexant occurred at approximately 1–2 hours (range 0.5–6.0 hours), although the study authors noted slight variability based on the time of day. The terminal half-life of suvorexant is approximately 8–11 hours after a 40-mg dose. The pharmacokinetics of suvorexant following multiple dose administrations were similar to those following single dose administrations, with slightly less than dose proportional pharmacokinetics over 10–80 mg as assessed by $AUC_{0-\infty}$ and C_{max}. Steady state exposure was reached after 2–3 days of consecutive dosing.

4. *Its History and Current Pattern of Abuse:* Suvorexant is not currently marketed or available for sale in any country, therefore there is no known history or pattern of abuse. However, results from the human abuse potential study suggest that suvorexant produces effects that are similar to zolpidem (schedule IV) and would have a similar pattern of abuse.

5. *The Scope, Duration, and Significance of Abuse:* While the current scope, duration, and significance of abuse of suvorexant are unknown due to its non-marketed status, the results of the human abuse potential study previously described suggest that, upon marketing, the scope, duration, and significance of suvorexant abuse may be similar to zolpidem (schedule IV). Data from the Drug Abuse Warning Network (DAWN) and the Adverse Event Reporting System (AERS) demonstrate the scope, duration, and significance of abuse of zolpidem (schedule IV) and related sedative-like drugs. In general, emergency department (ED) visits reported for zolpidem (schedule IV) along with those specifically categorized as ''misuse/abuse'' have increased every year from 2004 to 2010, with a modest decrease reported for 2011. ED visits related to benzodiazepine sedatives including diazepam (schedule IV) and lorazepam (schedule IV) demonstrated a similar trend. Suvorexant would be expected to have a similar scope, duration, and significance of abuse.

6. *What, If Any, Risk There Is to the Public Health:* Suvorexant has a long terminal half-life of approximately 8–11 hours, which may increase the duration of its sedative effects and psychomotor impairment. Suvorexant's extended duration of action increases its risk to the public health relative to zolpidem (schedule IV) and other short acting sedatives. Results of the human abuse potential study showed that suvorexant produces behavioral impairment, as evidenced by its effects on psychomotor performance and cognitive function. On these assessments, suvorexant generally produced deficits that were statistically indistinguishable from 15 mg of zolpidem (schedule IV), demonstrating the behavioral impairing effects of suvorexant, and suggesting that even at therapeutic doses, suvorexant will present a risk to the public health that is at least equivalent to that of zolpidem (schedule IV).

7. *Its Psychic or Physiological Dependence Liability:* Results of the human abuse potential study demonstrate that suvorexant has a psychic dependence liability similar to zolpidem (schedule IV). Self-administration in laboratory animals, epidemiological data documenting its use and abuse, and the ability to produce ''Drug Liking'' in human drug users demonstrate the psychic dependence liability of zolpidem (schedule IV). Similar data was collected for suvorexant and compared to zolpidem.

Discontinuation studies suggest that suvorexant does not produce physical dependence or withdrawal syndrome. Observed effects following suvorexant discontinuation include the return of insomnia symptoms. Furthermore, a lack of tolerance in humans from suvorexant was demonstrated by the sustained efficacy of suvorexant in Phase 3 trials where subjects reported improvement in sleep-related assessments that were still present one month after the start of treatment.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA:* Suvorexant is not an immediate precursor of a substance already controlled under the CSA.

Conclusion: After considering the scientific and medical evaluation conducted by the HHS, the HHS' recommendation, and its own eight-factor analysis, the DEA has determined that these facts and all relevant data constitute substantial evidence of a potential for abuse of suvorexant. As such, the DEA hereby proposes to schedule suvorexant as a controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA outlines the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Deputy Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(4), finds that:

1. Suvorexant has a low potential for abuse relative to the drugs or other substances in schedule III. The overall abuse potential of suvorexant is comparable to schedule IV controlled substances such as zolpidem;

2. Upon approval of the pending new drug application, suvorexant will have a currently accepted medical use in the treatment of insomnia in the United States; and

3. The available evidence indicates that abuse of suvorexant may lead to limited psychological dependence relative to the drugs or other substances in schedule III. The potential for psychological dependence is similar to that of zolpidem (schedule IV).

Based on these findings, the Deputy Administrator of the DEA concludes that suvorexant ([(7*R*)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl][5-methyl-2-(2*H*-1,2,3-triazol-2-yl)phenyl]methanone), including its salts, isomers, and salts of isomers

warrants control in schedule IV of the CSA. 21 U.S.C. 812(b)(4).

Requirements for Handling Suvorexant

If this rule is finalized as proposed, suvorexant would be subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

Registration. Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities with) suvorexant, or who desires to handle suvorexant, would be required to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles suvorexant, and is not registered with the DEA, would need to be registered with the DEA by the effective date of the final rule to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

Security. Suvorexant would be subject to schedule III–V security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b) and in accordance with 21 CFR 1301.71–1301.93.

Labeling and Packaging. All labels and labeling for commercial containers of suvorexant on or after finalization of this rule would need to comply with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302.

Inventory. Every DEA registrant who possesses any quantity of suvorexant on the effective date of the final rule would be required to take an inventory of all stocks of suvorexant on hand as of the effective date of the rule, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who becomes registered with the DEA after the effective date of the final rule would be required to take an initial inventory of all stocks of controlled substances (including suvorexant) on hand at the time of registration pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b). After the initial inventory, every DEA registrant would be required to take a biennial inventory of all controlled substances (including suvorexant) on hand, on a biennial basis, pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Records. All DEA registrants would be required to maintain records with respect to suvorexant pursuant to 21 U.S.C. 827, 958, and in accordance with 21 CFR parts 1304, 1307, and 1312.

Prescriptions. All prescriptions for suvorexant or products containing suvorexant would need to comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR part 1306, and part 1311 subpart C.

Importation and Exportation. All importation and exportation of suvorexant would need to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

Criminal Liability. Any activity involving suvorexant not authorized by, or in violation of, the CSA, occurring on or after finalization of this proposed rule, would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule will not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this proposed rule is to place suvorexant, including its salts, isomers, and salts of isomers, into schedule IV of the CSA. No less restrictive measures (i.e., non-control, or control in schedule V) enable the DEA to meet its statutory obligations under the CSA. In preparing this certification, the DEA has assessed economic impact by size category and has considered costs with respect to the various DEA registrant business activity classes.

Suvorexant is a new molecular entity which has not yet been marketed in the United States or any other country. Accordingly, the number of currently identifiable manufacturers, importers, and distributors for suvorexant is extremely small. The publicly available materials also specify the readily identifiable persons subject to direct regulation by this proposed rule. Based on guidelines utilized by the Small Business Administration (SBA), the suvorexant manufacturer/distributor/importer was determined not to be a small entity. Once generic equivalents are developed and approved for manufacturing and marketing, there may be additional manufacturers, importers, and distributors of suvorexant, but whether they may qualify as small entities cannot be determined at this time.

There are approximately 1.5 million controlled substance registrants, who represent approximately 381,000 entities (which include businesses, organizations, and governmental jurisdictions). The DEA estimates that 371,000 (97 percent) of these entities are considered ''small entities'' in accordance with the RFA and SBA standards. 5 U.S.C. 601(6); 15 U.S.C. 632. Due to the wide variety of unidentifiable and unquantifiable variables that potentially could influence the dispensing rates of new molecular entities, the DEA is unable to determine what number of these 371,000 small entities might handle suvorexant.

Despite the fact that the number of small entities possibly impacted by this proposed rule could not be determined, the DEA concludes that they would not experience a significant economic impact as a result of this proposed rule. The DEA estimates all anticipated suvorexant handlers to be DEA registrants and currently 98 percent of DEA registrants (most of which are small entities) are authorized to handle schedule IV controlled substances. Even assuming that all of these registrants were to handle suvorexant the costs that they would incur as a result of suvorexant scheduling would be nominal as they have already established and implemented the required security, inventory, recordkeeping, and labeling systems and processes to handle schedule IV controlled substances.

Because of these facts, this proposed rule will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. . . .'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.14 by redesignating paragraphs (c)(50) through (c)(55) as paragraphs (c)(51) through (c)(56) and adding new paragraph (c)(50) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(50) Suvorexant 2223

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Dated: February 7, 2014.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2014–03124 Filed 2–12–14; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–9906–45–ORD; Docket ID No. EPA–HQ–ORD–2013–0620 and Docket ID No. EPA–HQ–OAR–2014–0128]

Notice of Workshop in Support of the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of workshop.

SUMMARY: EPA is announcing a ''*Workshop to Discuss Policy-Relevant Science to Inform EPA's Review of the Secondary National Ambient Air Quality Standards (NAAQS) for Oxides of Nitrogen and Sulfur.*'' This workshop is being organized by EPA's Office of Research and Development's, National Center for Environmental Assessment (NCEA) and the Office of Air and Radiation's, Office of Air Quality Planning and Standards (OAQPS). The workshop will be held March 4–6, 2014, in Research Triangle Park, North Carolina, and it will be open to attendance by interested public observers on a first-come, first-served basis up to the limits of available space.

DATES: The workshop will be held March 4–6, 2014. The pre-registration deadline is February 28, 2014.

ADDRESSES: The workshop will be held at U.S. EPA, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. An EPA contractor, ICF International, is providing logistical support for the workshop. Please register by going to: *https://sites.google.com/site/soxnoxkickoffworkshop/.*

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding workshop registration or logistics to Courtney Skuce at: *EPA_NAAQS_Workshop@icfi.com* or by phone at: 919–293–1660. For technical information, contact Tara Greaver, Ph.D., NCEA; telephone: 919–541–2435; or email: *greaver.tara@epa.gov* or Ginger Tennant, OAQPS; telephone: 919–541–4072; or email: *tennant.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Workshop

Section 108(a) of the Clean Air Act directs the Administrator to issue ''air quality criteria'' for certain air pollutants. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare, which may be expected from the presence of such pollutant in the ambient air. . . .'' Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

NO_X and SO_X are two of six ''criteria'' pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA). The ISA, along with additional technical and policy assessments conducted by OAQPS, form the basis for EPA decisions on the adequacy of existing NAAQS and the appropriateness of new or revised standards.

This workshop is designed to inform the planning for EPA's recently initiated review of the secondary (welfare-based) NAAQS for Oxides of Nitrogen and Sulfur. The **Federal Register** notice issuing EPA's call for information for the recently initiated review is available at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/2013_fr.html.* Consistent with the NAAQS review process, the workshop will provide an opportunity for those attending to highlight key science issues that they consider relevant to EPA's review of the standards (referred to as ''policy-

relevant issues''). More information on the NAAQS review process is provided at: *http://www.epa.gov/ttn/naaqs/*. In workshop discussions, scientific experts will be expected to highlight significant new and emerging research on oxides of nitrogen and sulfur and make recommendations to the Agency regarding the design and scope of this review. The goal of the workshop is to ensure that EPA focuses on the key issues relevant to EPA's review of the NAAQS and considers the most meaningful new science to inform our understanding of these issues. Workshop discussions will provide important input as EPA considers the appropriate design and scope of major elements of the review that will inform the Agency's policy assessment. These elements include an integrated review plan (IRP) identifying the key policy-relevant issues; an integrated science assessment (ISA); and a risk and exposure assessment (REA). We intend that workshop discussions will build upon the following three publications:

- *Secondary National Ambient Air Quality Standards for Nitrogen Dioxide; Final Rule* (*40 CFR part 50 [EPA–HQ–OAR–2007–1145], April 3, 2012*). The preamble to the final rule included detailed discussions of policy-relevant issues central to the last review.
- *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Ecological Criteria (EPA 600/R–08/082F, December 2008).*
- *Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard (EPA 452/R–09/008a, September 2009).*

You can obtain copies of these and other related documents at: *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/index.html*.

Drawing from the workshop discussions, EPA will develop a draft IRP. The IRP, in addition to summarizing the schedule and process for the review, will present approaches for evaluating the relevant scientific information; assessing risks to the environment; and addressing the key policy-relevant issues. The Clean Air Scientific Advisory Committee (CASAC) will be asked to review the draft IRP, and the public will have the opportunity to comment on it as well. The final IRP will be used as a framework to guide the review.

Dated: February 4, 2014.

Abdel Razak M. Kadry,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2014–03116 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002; FRL–9906–38–Region–4]

Approval and Promulgation of Implementation Plans: Alabama: Error Correction and Disapproval of Revisions to the Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to correct, pursuant to the Clean Air Act (CAA or Act), its erroneous approval of revisions to Alabama's State Implementation Plan (SIP) that amended the visible emissions rule applicable to certain stationary sources. The State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted the SIP revisions in question to EPA on September 11, 2003, and August 22, 2008. EPA took final action approving these SIP revisions on October 15, 2008. EPA is now reconsidering its previous approval and is proposing to determine that EPA's October 2008 approval of these SIP revisions was in error. Consequently, EPA is also proposing to disapprove the aforementioned SIP revisions.

DATES: Written comments must be received on or before March 17, 2014.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–R04–OAR–2005–AL–0002, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2005–AL–0002, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–AL–0002.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. Errors that EPA Made in the October 15, 2008, Rulemaking Approving Alabama's Visible Emissions SIP Revisions
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I. Background for These Proposed Actions

The State of Alabama, through ADEM, submitted SIP revisions to EPA on September 11, 2003, and August 22, 2008, to revise Alabama's SIP-approved visible emissions rule. EPA took final action approving Alabama's September 11, 2003, and August 22, 2008, SIP revisions (hereafter also referred to as the ''Submittals'') on October 15, 2008. *See* 73 FR 60957. Subsequently, on April 6, 2011, EPA took final action to disapprove Alabama's Submittals. *See* 76 FR 18870. EPA's disapproval action was later vacated by the United States Court of Appeals for the Eleventh Circuit (hereafter also referred to as the ''Court'' or the ''Eleventh Circuit Court of Appeals''). See below for more details on the Court's decision. A copy of this decision is in the docket [1] for this proposed rulemaking. The Court decision put back in effect EPA's October 2008, approval action. Today, EPA is reconsidering its October 2008 approval action, and is proposing to determine, pursuant to section 110(k)(6) of the CAA, that EPA's October 2008 approval of Alabama's SIP revisions (submitted September 11, 2003, and August 22, 2008) to change its EPA-approved visible emission rule (referred to hereafter as the ''previous rule'') was in error. Consequently, EPA is also proposing to disapprove the aforementioned SIP revisions.

More detail on EPA's rationale for today's proposed actions is provided below. Specifically, Section II, below, outlines EPA's basis for proposing to determine that EPA erred in October 2008 when it approved the Submittals and thus the current, or ''revised,'' SIP rule. Section III provides the basis for EPA's proposed disapproval of the Submittals. Today's proposed disapproval action is consistent with the analysis that EPA laid out in the April 6, 2011, final disapproval action for these Submittals but is more specific than that action with regard to the errors EPA has determined were made by the 2008 approval action.

A. Background on Court Decision Related to EPA's Previous Actions on Alabama's Visible Emission Rule Changes

As mentioned above, EPA took action on October 15, 2008, to approve changes to Alabama's visible emissions rule that were submitted in SIP revisions on September 11, 2003, and August 22, 2008. *See* 73 FR 60957. Subsequently, on April 6, 2011, EPA took final action to disapprove Alabama's Submittals. *See* 76 FR 18870. EPA's April 6, 2011, final action was challenged in the Eleventh Circuit Court of Appeals by Alabama Power Company (joined through intervention by the State of Alabama). This case was ultimately consolidated with the pending but stayed challenges by the Alabama Environmental Council (AEC) and others to EPA's October 2008 approval of the Submittals. Following briefing and oral argument, the Eleventh Circuit Court of Appeals issued a 2–1 decision on March 6, 2013, vacating EPA's April 2011 disapproval action and affirming EPA's October 2008 approval action. *See Alabama Environmental Council* v. *EPA,* 711 F.3d 1277 (11th Cir. 2013). The majority opinion found that CAA section 110(k)(6) permits EPA to revise a SIP provision approved ''in error'' without any further submission from the State, so long as EPA provides the State and the public with its error determination and the basis thereof. *See* 711 F3d at 1287. Specifically, the Court explained: ''Thus, if the EPA chooses to invoke Section 110(k)(6) to revise a prior action, Congress has required the EPA to articulate an 'error' and provide 'the basis' of its determination that an error occurred.'' *Id.* Today, EPA is reconsidering its action in October 2008 to approve Alabama's Submittals, and is now proposing to determine pursuant to CAA 110(k)(6), that EPA's October 15, 2008, approval of Alabama's September 11, 2003, and August 22, 2008, SIP revisions related to visible emissions was in error, consistent with section 110(k)(6). Today, EPA is initiating a comment period regarding issues presented in this notice for the following reasons: (1) to provide the public with the basis of EPA's determination of what errors occurred; and (2) to outline EPA's rationale for disapproval of Alabama's Submittals. An overview of EPA's previous actions and other relevant background is provided below.

B. Background on Error Corrections Under CAA Section 110(k)(6)

Section 110(k)(6) of the CAA provides EPA with the authority to make corrections to actions that are subsequently found to be in error. The key provisions of section 110(k)(6) for present purposes are that the Administrator has the authority to ''determine[]'' when a SIP approval was ''in error,'' and when the Administrator does so, may then revise the SIP approval ''as appropriate,'' in the same manner as the prior action, and do so without requiring any further submission from the State. As mentioned above, the Eleventh Circuit Court affirmed EPA's authority to use section 110(k)(6) to revise a prior action related to a state's implementation plan. *See* 711 F3d at 1287. While CAA section 110(k)(6) provides EPA with the authority to correct its own ''error,'' nowhere does this provision or any other provision in the CAA define what qualifies as ''error.'' Thus, EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect or wrong actions or mistakes.

Additionally, the legislative history of CAA section 110(k)(6) is silent regarding the definition of error, but the timing of the enactment of the provision suggests a broad interpretation. The provision was enacted shortly after the U.S. Court of Appeals for the Third Circuit (hereafter referred to as the ''Third Circuit Court'') decision in *Concerned Citizens of Bridesburg* v. *U.S. EPA* (hereafter referred to as ''Bridesburg''), 836 F.2d 777 (3rd Cir. 1987). In *Bridesburg,* the Third Circuit Court adopted a narrow interpretation of EPA's authority to correct errors unilaterally. The Third Circuit Court stated that such authority was limited to typographical and other similar errors, and stated that any other change to a SIP must be accomplished through a SIP revision. *Id.* at 786.

In *Bridesburg,* EPA determined that it lacked authority to include odor regulations as part of a SIP unless the

[1] EPA notes that while the docket for today's action includes the most recent previous EPA actions (and other information) related to Alabama's changes to its visible emissions rule, EPA is not reopening comment on issues related to those previous actions, and is only taking comment on issues proposed in today's rulemaking.

odor regulations had a significant relationship to achieving a national ambient air quality standard (NAAQS), and so the Agency directly acted to remove the 13-year-old odor provisions from the Pennsylvania SIP. *Id.* at 779–80. Specifically, EPA found the previous approval of the odor provisions into the SIP was an inadvertent error, and thus used its ''inherent authority to correct an inadvertent mistake'' to withdraw its prior approval of the odor regulations without seeking approval of the change from Pennsylvania. *Id.* at 779–80, 785. After noting that Congress had not contemplated the need for revision on the grounds cited by EPA, *id.* at 780, the Third Circuit Court found that EPA's ''inherent authority to correct an inadvertent mistake'' was limited to corrections such as ''typographical errors,'' and that instead EPA was required to use the SIP revision process to remove the odor provision from the SIP. *Id.* at 785–86.

When the Third Circuit Court made its determination in *Bridesburg* in 1987, there was no provision explicitly addressing EPA's error correction authority under the CAA. In 1990, Congress added section 110(k)(6) to the CAA. The legislative history of the CAA says little about the provision, and does not mention *Bridesburg.* Even so, the terms of the provision make it evident that Congress authorized EPA to undertake a broader set of revisions when correcting errors than the *Bridesburg* court read the pre-existing CAA to authorize, and that Congress did not intend to codify the holding of the *Bridesburg* decision. This is apparent because CAA section 110(k)(6) both: (1) authorizes EPA to correct SIP approvals and other actions that were ''in error,'' which, as noted previously, broadly covers any mistake, and thereby contrasts with the holding in the *Bridesburg* decision that EPA's pre-section 110(k)(6) authority was limited to correction of typographical or similar mistakes; and (2) provides that the error correction need not be accomplished via the SIP revision or SIP call process, which also contrasts with the holding of the *Bridesburg* decision requiring a SIP revision. By the same token, because the *Bridesburg* decision stood for the proposition that EPA could not correct anything more than a narrow range of typographical errors, had Congress intended to codify the decision in *Bridesburg,* it is logical that Congress would have described the type of error that EPA was authorized to correct in the same limited way that the decision did. In this manner, the fact that Congress adopted CAA section 110(k)(6) against the backdrop of the *Bridesburg* case confirms that the provision cover a broad range of errors.

EPA has used CAA section 110(k)(6) as authority to make substantive corrections to remove a variety of provisions from federally-approved SIPs that are not related to the attainment or maintenance of NAAQS or any other CAA requirement. *See, e.g.,* ''Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to the State Implementation Plan,'' 75 FR 2440 (January 15, 2010) (correcting the SIP by removing a provision, approved in 1982, used to address hazardous or toxic air pollutants); ''Approval and Promulgation of Implementation Plans; New York,'' 73 FR 21546 (April 22, 2008) (issuing a direct final rule to correct a prior SIP correction from 1998 that removed general duties from the SIP but neglected to remove a reference to ''odor'' in the definition of ''air contaminant or air pollutant''); ''Approval and Promulgation of Implementation Plans; New York,'' 63 FR 65557 (November 27, 1998) (issuing direct final rule to correct SIP by removing a general duty ''nuisance provision'' that had been approved in 1984); ''Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans,'' 63 FR 34641 (June 27, 1997) (correcting five SIPs by deleting a variety of administrative provisions concerning variances, hearing board procedures, and fees that had been approved during the 1970s).

CAA section 110(k)(6), by its terms—specifically, the use of the terms ''[w]henever'' and ''may''—authorizes, but does not require, EPA to make the specified finding. As a result, EPA has discretion in determining whether and when to make the specified finding and to utilize authority of section 110(k)(6). *See New York Public Interest Research Group* v. *Whitman,* 321 F.3d 316, 330–31 (2d Cir. 2003) (opening phrase ''Whenever the Administrator makes a determination'' in CAA section 502(i)(1) grants EPA ''discretion whether to make a determination''); *Her Majesty the Queen in Right of Ontario* v. *EPA,* 912 F.2d 1525, 1533 (D.C. Cir. 1990) (''whenever'' in CAA section 115(a) ''impl[ied] a degree of discretion'' in whether EPA had to make a finding). In addition, EPA has used CAA section 110(k)(6) authority to correct errors of a non-technical nature. Most recently, EPA withdrew its approval of SIP prevention of significant deterioration (PSD) programs in 24 states to the extent they apply PSD to Greenhouse Gas-emitting sources below the thresholds in the final Tailoring Rule.[2]

C. Differences Between Alabama's Previous SIP Opacity Rule and the Revised Rule Requested in Alabama's 2003 and 2008 Submittals

Under both the pre-existing opacity restrictions in Alabama's SIP and the changes requested in Alabama's 2003 and 2008 submittals, the maximum number of six-minute periods[3] above the general 20 percent opacity limit allowed per day is the same—24. The maximum ''average daily opacity'' allowed under the previous rule is the same as the specific cap under the submittals—22 percent. On a quarterly basis, the total of exempt opacity exceedances allowed under the previous rule is 10 percent of operating time but is specifically capped under the submittals at 2 percent of operating time, while the maximum ''average quarterly opacity'' allowed is approximately the same—22 percent under the previous rule, and 21.6 percent under the submittals.[4]

However, there are two significant differences[5] between the previous rule and the revised rule. The first significant difference is that the revised rule allows for maximum visible emissions of up to 100 percent opacity during 24 six-minute periods per day, while the previous rule allowed for maximum visible emissions of up to only 40 percent opacity during 24 six-minute periods per day. *See* Alabama Administrative Code (AAC) 335–3–4–.01(4) (revised rule). The second significant difference is that the revised rule allows opacity above the general 20 percent SIP standard for up to 2.4 consecutive hours (*i.e.,* an aggregate of 24 six-minute periods per calendar day), while the previous rule allowed

[2] See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010) (Narrowing Rule).

[3] Unless otherwise noted, this notice refers to exempt periods other than those provided by the previous rule for startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit), which were part of the existing SIP-approved rule and remained unchanged under the October 15, 2008, final action rule.

[4] See previous rule AAC 335–3–4–.01(1)(b) and current rule AAC 335–3–4–.01(4) and 335–3–4–.01(5).

[5] One of the technical support documents (TSDs) provided for this action explains in detail the differences between the current and prior visible emissions rules. EPA considered all the differences in reaching its decision today. EPA is simply identifying two significant differences that are particularly relevant to the analysis of the submittal. *See* EPA–R04–OAR–2005–AL–0002–0093.

exceedances of the 20 percent SIP standard for intervals of only 0.1 consecutive hours (*i.e.,* one six-minute period per hour).[6] A critical consideration, therefore, is whether the significant increase of the maximum allowable opacity from 40 percent to 100 percent for up to 2.4 consecutive hours per day could result in more PM emissions were sources to take advantage of the changed limits.

D. Background on Alabama's Visible Emission Rule and EPA's Previous Action on Alabama's Submittals Related to Visible Emissions

EPA first approved Alabama's visible emissions rule into the Alabama SIP in 1972. *See* 37 FR 10842, 10847 (May 31, 1972). The State submitted the visible emissions rule as part of its SIP for attainment and maintenance of the total suspended particulates (TSP) NAAQS (the predecessor to the Particulate Matter (PM) NAAQS). The State has revised its visible emission rule three times in support of those goals.

Historically, Alabama has had areas with attainment problems for the various PM NAAQS. Originally, EPA designated some areas in Alabama as nonattainment for the TSP NAAQS. In 1987, EPA replaced the TSP NAAQS with the PM_{10} NAAQS, and all areas of Alabama were designated as attainment for those NAAQS. *See* 56 FR 11101 and 58 FR 67734. All areas of Alabama remain designated attainment for the PM_{10} NAAQS. In 1997, EPA promulgated new annual and 24-hour particulate matter NAAQS, using $PM_{2.5}$ as the indicator. Effective April 5, 2005, EPA designated portions of Alabama, in the Birmingham and Chattanooga areas, as nonattainment for the 1997 $PM_{2.5}$ NAAQS.[7] [8] The Chattanooga nonattainment area for the 1997 $PM_{2.5}$ NAAQS included a portion of Jackson County, Alabama. *See* 70 FR 944. Alabama's visible emissions rules at AAC 335–3–4–.01(4) continue to be a part of the Alabama SIP for attainment and maintenance of the PM NAAQS.

As mentioned above, Alabama submitted SIP revisions on September 11, 2003, and August 22, 2008, with changes to its visible emission rule. Specifically, the Submittals affect the applicable visible emissions limits at approximately 19 stationary source facilities.[9] These 19 facilities include older coal-fired utilities, cement manufacturing facilities, and pulp and paper facilities, among others. Five of these facilities are located in or near areas (e.g., Birmingham) that as of 2008 exceeded applicable $PM_{2.5}$ NAAQS.[10] In addition, Widows Creek Fossil Plant, operated by the Tennessee Valley Authority (TVA)), is located in the Chattanooga nonattainment area for the 1997 Annual $PM_{2.5}$ NAAQS. Other facilities affected by Alabama's visible emissions rule may also impact these or other areas.

Opacity may be defined as the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. *See* 40 CFR 60.2. ''Visible emissions'' are pollutant discharges from a source that can be seen with the naked eye and are commonly measured as a percent of opacity. Opacity is an important emissions reduction tool because it provides information regarding pollutants leaving an emissions source and the effectiveness of the control equipment designed to capture those pollutants. In general, the more particles which scatter or absorb light that pass through an emissions point, the more light will be blocked, thus increasing the opacity percentage of the emissions plume. However, variables such as the size, number, and composition of the particles in the emissions can result in variations in the percentage of opacity.

Historically, visible emissions have been an important tool for implementation of PM NAAQS and, in particular, for the implementation and enforcement of PM limits on sources to help attain the NAAQS. The monitoring of visible emissions remains a useful technique for indicating the overall operation and maintenance of a facility and its emissions control devices and was employed even before modern instruments that measure PM on a direct, continuous basis existed. Observation of greater than normal visible emissions, particularly on a recurring basis, indicates that incomplete combustion or other changes to the process or the control device is or was occurring; such changes frequently lead to increased PM emissions. Although opacity is not a criteria pollutant, opacity standards continue to be used as an indicator of the effectiveness of emission controls for PM emissions, or to assist with implementation and enforcement of PM emission standards for purposes of attaining PM NAAQS. Further, well-maintained and well-operated sources should be able to achieve visible emissions that comply with opacity limits. For example, data submitted by one previous commenter to EPA's actions on Alabama's visible emission rule show routine source operation with opacity of about five percent.[11] Conversely, visible emissions at much higher percentages (such as those allowed by Alabama's revised rule), particularly on a recurring basis, may indicate that a source is emitting more PM and may be in violation of applicable SIP or permit PM mass limits as well. Alabama's Submittals would authorize sources to emit visible emissions of up to 100 percent opacity (the previous maximum opacity was 40 percent) for up to 2.4 consecutive hours per day [12] (the previous consecutive maximum time for sources to exceed the generally applicable 20 percent opacity standard was 6 minutes per hour). To be approvable, these changes must be consistent with CAA sections 110(l) and 193.

On October 15, 2008, EPA took final action to incorporate into the Alabama

[6] See previous rule AAC 335–3–4–.01(1)(b) and current rule AAC 335–3–4–.01(4).

[7] On January 22, 2013, EPA redesignated the Birmingham Area to attainment for the 1997 $PM_{2.5}$ NAAQS, so this area is currently a ''maintenance'' area for the 1997 $PM_{2.5}$ NAAQS. *See* 78 FR 4341.

[8] In 2006, EPA promulgated new $PM_{2.5}$ NAAQS, significantly tightening the 24-hour standards. Effective December 14, 2009, the Birmingham area was designated nonattainment for the 24-hour $PM_{2.5}$ NAAQS, as revised in 2006. In 2013, EPA redesignated the Birmingham Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS (78 FR 5306, January 25, 2013). A portion of Jackson County, Alabama in association with the Chattanooga area remains designated as nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA is currently evaluating Alabama's request for EPA to redesignate the portion of Jackson County, Alabama that is nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, and the State's associate maintenance plan.

[9] At this time, it is EPA's understanding that the rule at issue applies to 19 facilities. Due to the applicability portions of the rule, the rule could apply to fewer facilities over time, but likely will not apply to any more.

[10] As noted later in this rulemaking and above, EPA is proposing to determine that the Agency made an error in approving Alabama's visible emission rule changes in the October 15, 2008, rulemaking. EPA notes that based on the most recently quality-assured data for Alabama that some areas of Alabama, including Birmingham, exceed the 2012 $PM_{2.5}$ Annual NAAQS.

[11] Alabama Power Company in Attachment T from the docket (Docket No. EPA–R04–OAR–2005–AL–0002–0082.1) shows that over a three-year period its units did not exceed 5 percent opacity for 55.4 percent of the operating time, 10 percent opacity for 89 percent of the operating time, and 15 percent opacity for 97.6 percent of the operating time. In addition, the U.S. District Court for the Northern District of Alabama found in 2009 that at TVA's Plant Colbert, Units 1–4 typical baseline opacity measured about 5–8 percent during normal unit operation, and Unit 5 was projected to operate below 5 percent opacity even with a partially malfunctioning control device and below 10 percent ''under extreme conditions that are unlikely to ever occur.'' *Sierra Club* v. *TVA,* 592 F. Supp. 2d 1357, 1367 (N.D. AL 2009).

[12] The Submittals allow up to 2.4 hours per day of operation at opacity levels in excess of 20 percent, provided that the total of such periods do not exceed 2 percent of operating time in a quarter, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit).

SIP, the changes to Alabama's visible emissions rule included in the Submittals. *See* 73 FR 60957. EPA's rationale for its approval is discussed in that final action. EPA's approval of the SIP revisions relied on two main findings: ''(1) the revision would not increase the allowable average opacity levels; and (2) the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels cannot be quantified readily for the sources subject to this SIP revision, and is particularly uncertain for short-term analyses.'' *See* 73 FR 60959. EPA's October 15, 2008, final action was effective on November 14, 2008 (by its terms, the Alabama rule change became effective, and thus applicable to sources, on May 14, 2009).

Following the October 2008 final action, EPA received two petitions for reconsideration submitted on behalf of AEC and other parties (Petitioners), one on December 12, 2008, and one on February 25, 2009. EPA considered these petitions under section 553(e) of the Administrative Procedures Act (APA) and the CAA. The first petition for reconsideration raised procedural and substantive concerns with EPA's October 2008 final action.[13] EPA denied the December 12, 2008, petition via letter on January 15, 2009. The second petition incorporated by reference the issues raised in the first petition and also identified additional substantive and procedural concerns not included in the first petition.[14] EPA granted the second petition for reconsideration of the October 2008 final action via letter on April 3, 2009. In that letter, EPA explained that it anticipated initiating a new rulemaking process to provide additional opportunities for public comment on issues raised in the petition for reconsideration. On December 12, 2008, Petitioners filed a lawsuit in the Eleventh Circuit Court of Appeals challenging EPA's October 2008 final action. The Court subsequently stayed the litigation pending the conclusion of EPA's reconsideration process.

On October 2, 2009, EPA proposed to initiate a new rulemaking process to reconsider its prior action on the Submittals. *See* 74 FR 50930. In that proposal, EPA articulated two alternative options and sought public comment on both. One option was to affirm the October 2008 final action (thus approving Alabama's SIP revisions) and the other was to amend the October 2008 final action (thus disapproving Alabama's SIP revisions). The bases for each alternative were described in detail in the October 2, 2009, proposed rulemaking. *See* 74 FR 50932–50934. EPA thus undertook full notice and comment again on the substantive issues relevant to the SIP revisions. EPA received numerous comments on its October 2, 2009, proposed rule.

In EPA's April 6, 2011, final action, EPA explained the basis of its determination that the Submittals were not approvable. EPA began by explaining: ''In light of the fact that this SIP revision would apply statewide, including nonattainment areas, EPA has concluded that it cannot approve the SIP revision under section 110(l) if it would worsen air quality by allowing increased emissions of criteria pollutants or precursors to such criteria pollutants.'' *See* 76 FR 18871. EPA then discussed the role of visible emissions in NAAQS attainment and maintenance, highlighting that historically, visible emissions have been an important tool for implementation of the PM NAAQS and, in particular, for the implementation and enforcement of PM limits on sources to help attain, and maintain, the NAAQS. *See* 76 FR 18872. EPA explained that while sources submitted data during the comment period on the October 2009 proposal that suggested routine source operation of about five percent opacity, visible emissions at much higher percentages such as those allowed by the Submittals (which allow for opacity of up to 100 percent), particularly on a recurring basis, may indicate that a source is in violation of particulate matter emission limits in the SIP or individual source permits. *See* 76 FR 18872.

Though EPA's October 2009 **Federal Register** notice requested specific data on the correlation between opacity and particulate matter emissions, EPA received no such data obtained from any of the 19 sources that would be affected by the Submittals. *See* 76 FR 18872 and 74 FR 50934. As EPA explained in the April 6, 2011, final action, the Submittals included two key rule changes to the existing EPA-approved opacity standards that effectively allowed for increases in opacity emissions from the 19 older facilities which may not have state-of-the-art control equipment but which are subject to the rule. The first significant change was the allowance of maximum visible emissions of 100 percent opacity during certain periods while the previous rule allowed for maximum visible emissions of only 40 percent opacity. *See* 76 FR 18874. The second significant change was that the revised rule allowed for opacity to increase up to 100 percent for 2.4 consecutive hours, which Petitioners referred to as the ''bundling'' of high opacity periods, whereas the previous visible emissions standard did not allow for such bundling and restricted the opacity increases to six minutes per hour. *Id.*

As discussed in more detail above, EPA's April 6, 2011, final action was challenged in the Eleventh Circuit Court of Appeals by Alabama Power Company (joined through intervention by the State of Alabama). In a 2–1 decision on March 6, 2013, the Court vacated EPA's April 2011 disapproval action and affirming EPA's October 2008 approval action. *Alabama Environmental Council* v. *EPA,* 711 F.3d 1277 (11th Cir. 2013). The majority opinion found that CAA section 110(k)(6) permits EPA to revise a SIP provision approved ''in error'' without any further submission from the State, so long as EPA provides the state and the public with its error determination and the basis thereof. *See* 711 F.3d at 1281. Specifically, the Court explained: ''Thus, if the EPA chooses to invoke Section 110(k)(6) to revise a prior action, Congress has required the EPA to articulate an 'error' and provide 'the basis' of its determination that an error occurred.'' *Id.* at 1287.

When EPA took action on Alabama's visible emission rule changes in 2008, the Birmingham Area was designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS, and EPA was in the

[13] The Petitioners raised eight main issues: (1) EPA was arbitrary and capricious in failing to reopen the public comment period when ADEM made changes to the rule after the close of the public comment period; (2) EPA was arbitrary and capricious in deviating from rulemaking policy regarding documentation of post-comment period meetings between EPA and ADEM and failing to meet with Petitioners in addition to ADEM; (3) EPA was arbitrary and capricious in proposing to approve a SIP revision before the rule had even been developed at the State level; (4) EPA failed to comply with rulemaking procedures by failing to complete the docket prior to finalizing the rulemaking package; (5) The rule should not have been approved because it does not represent reasonably available control technology requirements for SIPs because Alabama has nonattainment areas for $PM_{2.5}$; (6) EPA's approval of the rule is not consistent with either section 110(l) or 193 of the CAA due to likely increases in short-term particulate matter emissions; (7) EPA's final action is not consistent with EPA policies on excess emissions and director's discretion; and (8) The final rule does not comply with 40 CFR part 51 because it is not an ''appropriate'' visible emission limitation.

[14] The Petitioners specifically highlighted two new issues: (1) the DC Circuit's decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008) (Start up, Shut Down (SSM) Maximum Available Control Technology (decision) made the Agency's action on the SIP revision untenable; and (2) new documents added to the docket show that throughout the consideration of this matter, EPA acted in an arbitrary and duplicitous manner in failing to re-notice the rulemaking for public comment given the differences between what EPA required of Alabama in the April 12, 2007, proposal and what Alabama actually submitted for approval in its August 22, 2008, submittal.

process of designating this same area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, a portion of Jackson County (in association with the Chattanooga area) was designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS. The geographic location of affected sources covered by the visible emission rules in the EPA-approved SIP is relevant. This is because (as is discussed more fully below) EPA interprets section 110(l) to prohibit approval of SIP revisions that would increase emissions of pollutants for which an area is designated nonattainment, in the absence of offsetting emission reductions or an attainment demonstration addressing the rule changes at issue. Further, under section 193 (which was not considered in the October 2008 approval—a matter that EPA is now proposing to determine was an error), an evaluation of the impacts of changes to Alabama's visible emissions rule was required for the nonattainment areas because the rule was in place prior to the 1990 amendments to the CAA.

II. Errors That EPA Made in the October 15, 2008 Rulemaking Approving Alabama's Visible Emissions SIP Revisions

EPA is proposing to determine, pursuant to CAA section 110(k)(6), that its 2008 approval of Alabama's 2003 and 2008 SIP submittals was in error. EPA is providing the specific error determinations and the basis for each determination below.

A. EPA Erred in Interpreting CAA Section 110(l) as Allowing EPA To Approve a SIP Revision That Relaxes Existing SIP Requirements Based on Uncertainty Regarding Whether the Revision Will Worsen Air Quality

In its 2008 action approving Alabama's 2003 and 2008 SIP submittals, EPA conceded that ''modeling presented by commenters show[ed] the possibility of an impact on the NAAQS under a worst-case scenario.'' *See* 73 FR 60962. EPA noted, however, that ''the modeling *does not convincingly demonstrate the impact of the rule change* on the NAAQS because the level of PM emissions while operating at 100 percent opacity, and the source-specific relationship between opacity and PM emissions, are uncertain and are not demonstrated in the public record.'' *Id.* (emphasis added). EPA further explained that ''the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels *cannot be quantified readily* for the sources subject to this SIP revision, and *is particularly uncertain* for short-term analysis.'' *See* 73 FR 60959 (emphasis added). Based in part on this finding of uncertainty regarding the actual air quality impacts of the requested SIP revisions and EPA's interpretation of CAA section 110(l) as only barring EPA's approval of a requested SIP revision if ''the agency finds it will make air quality worse'' (*see* 73 FR 60960), EPA concluded that the proposed revisions satisfied the requirements of CAA section 110(l) with respect to the 24-hour PM NAAQS. *See* 73 FR 60959. In other words, under EPA's 2008 interpretation of section 110(l), a SIP relaxation ''would interfere'' with NAAQS attainment and maintenance only where EPA is able to determine that it is more likely than not that the revision would worsen air quality. Because EPA concluded that data uncertainty prevented it from making that determination with respect to Alabama's SIP revisions, EPA concluded that it was approvable under section 110(l). As explained below, EPA now proposes to conclude that the interpretation of section 110(l) that EPA relied on for purposes of its 2008 approval of Alabama's requested SIP revisions was erroneous. Because EPA's 2008 final action depended on that erroneous statutory interpretation, EPA's approval of Alabama's requested SIP revisions was itself in error.

EPA's proposed conclusion that it erred in interpreting CAA section 110(l) as barring EPA's approval of a SIP relaxation only where EPA is able to conclude that it is more likely than not that the relaxation will make air quality worse is based on its view that this interpretation does not adequately implement section 110(l) in light of the CAA's purpose ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population,'' CAA section 101(b)(1). Specifically, given the technical complexity of assessing how a particular SIP revision will impact air quality, it may be difficult—or even impossible—to determine in advance whether a requested SIP revision will make air quality worse. Thus, an interpretation of the phrase ''would interfere'' in CAA section 110(l) that allows EPA to approve a SIP revision that relaxes existing SIP requirements despite significant uncertainty regarding whether the change will worsen air quality could well result in EPA approving SIP revisions that actually do worsen air quality, which would be contrary to the express purpose and requirements of section 110(l). While EPA could then attempt to remedy the problem by issuing a SIP call under CAA section 110(k)(5), compliance with SIP call procedures typically takes more than a year, and sometimes much longer. In the meantime, the public would be exposed to elevated air pollution levels. Thus, EPA finds that its 2008 approach of approving a SIP relaxation despite significant uncertainty as to whether the relaxation ultimately will worsen air quality was in error because such interpretation is inconsistent with section 110(l) and with EPA's responsibility under CAA section 101(b)(1) ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare.''

EPA now concludes that it should assume that a SIP revision that relaxes an existing SIP requirement ''would interfere'' with NAAQS attainment and maintenance in the absence of record evidence demonstrating that it would not. This assumption makes sense given that States adopt (and EPA approves) SIP requirements for the purpose of attaining and maintaining the NAAQS. Thus, it should be assumed that any existing SIP requirement is needed for that purpose, and if a State wishes to revise or remove a SIP requirement, such request must be accompanied by a demonstration that the revision would not interfere with NAAQS attainment or maintenance.

EPA's interpretation of CAA section 110(l) does not mean that a small possibility that a SIP revision might allow increased pollution that would interfere with NAAQS attainment or maintenance necessitates EPA's disapproval. EPA recognizes that attainment planning generally requires a high degree of technical judgment and often involves some degree of uncertainty. Thus, under EPA's interpretation of CAA section 110(l), EPA can approve a SIP relaxation if the State demonstrates either that it is unlikely that the revision would allow increased pollution or that any increases allowed by the revision would not be enough to interfere with NAAQS attainment or maintenance. Where data uncertainty prevents such a demonstration, however, EPA will assume that that the relaxation would interfere with NAAQS attainment or maintenance. EPA cannot, as it did in its 2008 action approving Alabama's 2003 and 2008 SIP submittals, rely on uncertainty regarding whether a SIP relaxation would make air quality worse as the basis for concluding that a revision is approvable under CAA section 110(l).

B. Even Applying EPA's 2008 Interpretation of CAA Section 110(l), EPA Erred in Determining That the Record Was Insufficient To Demonstrate That the Requested Revisions Would Interfere With NAAQS Attainment and Maintenance

Even applying its 2008 interpretation of CAA section 110(l)—which EPA now concedes was erroneous—EPA proposes to conclude that it erred in finding that uncertainty regarding the precise relationship between changes in opacity levels and increases or decreases in PM emissions meant that the record was insufficient to support a finding that the requested SIP revisions would interfere with attainment and maintenance of the PM NAAQS (*see* 73 FR 60959). While information in the record was insufficient to quantify the precise impact that the requested revisions would have on PM emissions, EPA now proposes to find that available information was sufficient to conclude that Alabama's SIP revisions would allow longer periods of elevated opacity that would, in some circumstances, allow increased PM emissions and would interfere with NAAQS attainment and maintenance.

Under EPA's 2008 interpretation of CAA section 110(l), a determination that Alabama's requested SIP revisions would more likely than not allow a PM emissions increase would have precluded EPA's approval absent other information demonstrating that such an emissions increase would not interfere with NAAQS attainment and maintenance. However, EPA determined that the uncertainty as to whether the SIP revisions would allow a PM emissions increase was so great that no likelihood could be estimated and found that this uncertainty made the revisions approvable under section 110(l). As discussed below, after reconsidering information in the record, EPA's judgment is that there is a relationship between opacity and PM emissions that supports a finding that Alabama's requested SIP revisions would, more likely than not, authorize increased PM emissions in some cases that would interfere with attainment and maintenance of the PM NAAQS.

First, EPA observes that there is a general relationship between opacity and PM emissions such that an increase in opacity means the concentration of smaller particles, larger particles, or both, increases. *See, e.g.,* Malm, William C., ''Introduction to Visibility,'' Cooperative Institute for Research in the Atmosphere, May 1999 at Chap. 2, p. 8. *See also* Comments of the Utility Air Regulatory Group on EPA's Proposed Approval of Revisions to the Visible Emissions Portion of the Alabama Implementation Plan (Docket I.D EPA–R04–OAR–2005–AL–0002–0012), at 4 (noting that ''an increase in opacity can be a good indication that PM emissions at the stack also are increasing''). Because increases in the quantity of smaller particles may be accompanied by decreases in the quantity of larger particles, and vice versa, opacity increases do not always reflect corresponding increases in the mass of PM emissions. Furthermore, while source-specific relationships between opacity and PM emissions may be obtained through testing, they can be influenced by a variety of circumstances such as fuel composition and types of equipment malfunction that may occur. However, uncertainty about the precise correlation between PM mass emissions and opacity as a general matter does not mean that opacity increases never represent concurrent increases in the mass of PM emissions from a source. To the contrary, given the large increases in maximum allowable opacity and for the periods of time at issue in the SIP revisions contemplated in Alabama's 2003 and 2008 submittals, EPA proposes to conclude that it is likely that the requested SIP revisions would allow increased PM emissions.

Second, EPA notes that Alabama's SIP revisions likely would allow PM emission increases because the revisions authorize higher opacity levels for longer periods than allowed under the existing SIP opacity rule. In EPA's experience, a longer period of high opacity (e.g., 100 percent opacity or other high opacity levels over a time period of an hour or longer) is more likely to indicate a problem with a control device—and, therefore, to correlate with an emission increase—than high opacity over a shorter period (e.g., 20 percent to 40 percent opacity over six minutes). Yet under Alabama's requested SIP revisions, a control device could temporarily shut down or malfunction, resulting in 100 percent opacity for up to 2.4 hours in a single day without causing any violation of the opacity standard. As a result, Alabama's requested SIP revisions undermine one of the primary purposes of opacity limits: To ensure that sources properly maintain and operate their PM control devices.

In contrast, Alabama's previous SIP opacity limit, by requiring consistent compliance at 20 percent and allowing only one excursion of six minutes per hour of up to 40 percent opacity, provides a greater incentive for sources to control their PM emissions with properly maintained and operated control devices. In EPA's judgment, based on experience, a source equipped with properly maintained and operated PM control devices is capable of consistently achieving low opacity levels. This conclusion is supported by the experience with the Colbert plant in Alabama, where the TVA undertook improvements to minimize opacity that included such items as training personnel, tracking opacity more closely, and upgrading equipment. *See Sierra Club* v. *Tennessee Valley Authority,* 592 F. Supp. 2d 1357 (N.D. Ala. 2009). A district court concluded that as a result of these changes, ''Colbert Unit 5 is capable of operating with essentially no non-exempt COMS [Continuous Opacity Monitoring System] readings over 20%.'' *Id.* at 1369. The district court further observed that once TVA became aware that it needed to comply with the opacity limit during all non-exempt periods, ''it immediately and consistently came into compliance with the 20% opacity limit in the SIP.'' *Id.* at 1370.

While various entities provided EPA with modeling results to aid in assessing the impact that Alabama's requested SIP revisions would have on ambient air quality, EPA proposes to conclude that none of the models reliably demonstrates the likely impact of the requested changes to Alabama's visible emissions rule on PM emissions. Significantly, the utility of all of the modeling data is undermined by the lack of source-specific data on the mass-opacity relationship. The docket for this action includes a TSD summarizing the modeling that EPA received and some of the key assumptions and other issues that impacted the utility of the modeling. Because of the weaknesses of the underlying data and assumptions used in the modeling, none of the modeling results are sufficient to rebut the information described above suggesting that Alabama's requested revisions to SIP opacity restrictions would correlate with increased PM emissions.

Taken together, the observations described above lead EPA to conclude there is a relationship between opacity and PM emissions such that the opacity increases allowed by Alabama's requested SIP revisions would more likely than not be associated with increased PM emissions in some cases, thereby worsening air quality. Under EPA's longstanding interpretation of section 110(l), a SIP relaxation that likely would result in increased emissions, particularly in areas that are not attaining the NAAQS, cannot be approved absent a contemporaneous attainment demonstration or other air

quality analyses demonstrating that the revision will not interfere with attainment or maintenance of the NAAQS.

For example, in 2005, EPA proposed to disapprove a SIP revision submitted by Ohio that would have relaxed opacity limitations for sources that utilize a continuous opacity monitoring system. *See* 70 FR 36901 (June 27, 2005). Specifically, Ohio's proposed SIP revision would have expanded the time that such sources could operate with opacity levels above the generally applicable standard in the existing SIP. *See* 70 FR 36902. Under the revision, the time of such additional excess opacity values could represent up to 1.1 percent of a source's operating time per quarter. *Id.* In proposing to disapprove Ohio's requested revision, EPA explained that though the revision would not increase the total allowable time of excess opacity, ''the revised rules allow excess opacity on occasions that excess opacity is currently prohibited, without any compensating prohibitions of emissions that are currently allowed.'' *See* 70 FR 36903. Based on that observation, EPA concluded that ''the revised rule clearly allows emissions that are prohibited by the current SIP.'' *Id.* Noting that CAA section 110(l) prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment or any other applicable CAA requirement, EPA explained: ''Ohio provided no analysis or demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements. Therefore, EPA must disapprove this revised rule.'' [15] *Id.*

As in the case of Ohio's requested relaxation of SIP opacity limits, the record for Alabama's requested SIP revisions lacks additional information sufficient to rebut the presumption that the relaxation of Alabama's SIP opacity requirements would interfere with attainment and maintenance of the PM NAAQS. Following reconsideration and a complete review of the record, EPA proposes to conclude that available information was, in fact, sufficient to support a conclusion that Alabama's requested SIP revisions would interfere with attainment and maintenance of the PM NAAQS. Thus, EPA's 2008 determination that Alabama's requested SIP revisions were approvable under section 110(l) and its action approving the relaxation based on that conclusion were erroneous.

C. EPA Erred by Relying on Its Determination That the Requested SIP Revisions Would Not Change Average Quarterly and Daily Opacity Levels to Support Its Finding That the Revisions Would Not Interfere With Attainment and Maintenance of the Annual and 24-Hour PM NAAQS

Aside from uncertainty, EPA also based its 2008 approval of Alabama's 2003 and 2008 SIP revisions, in part, on its determination that a source's allowable daily average and quarterly average opacity levels would not change as a result of the revisions. *See* 73 FR 60959. With respect to average daily opacity, this conclusion was based on a provision in Alabama's requested SIP revisions providing that a source's average daily opacity may not exceed 22 percent, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). *Id.* Though Alabama's Submittals did not include a similar limit on average quarterly opacity, EPA ''calculated the 'average quarterly opacity' allowed under both the existing SIP and the proposed revisions and showed that the proposed revision, with changes specified in the notice [of proposed rulemaking], would result in no greater average quarterly opacity allowed than what is allowed under the current standard.'' *See* 73 FR 60959. As explained below, EPA now proposes to conclude that it erred by relying on average daily and quarterly opacity as a means for evaluating whether the requested SIP revisions would interfere with attainment or maintenance of the annual and 24-hour PM NAAQS.

As discussed above, a primary purpose of opacity limits is to ensure that sources properly maintain and operate their PM control devices. Moreover, longer periods of high opacity are more likely than shorter periods to indicate a control device problem. Under Alabama's requested SIP revisions, a control device could temporarily shut down or malfunction, resulting in 100 percent opacity for up to 2.4 hours, yet the source could still be in compliance with the 22 percent average daily limit (and experience no change in its average quarterly opacity level). For example, in one day, a source that has 24 consecutive six-minute periods of 100 percent opacity but remains below an average of 13 percent opacity for the remaining 216 six-minute periods in the day would meet the 22 percent average daily opacity limit.[16] By ''averaging away'' such long periods of high opacity, Alabama's revised rule allows high opacity to be excused during precisely those periods that are expected to be associated with increased PM emissions. Thus, determining that Alabama's requested SIP revisions would not allow a source to increase its average quarterly or average daily opacity levels provides no basis for determining that the revisions will not allow a source to increase its PM emissions. Because EPA erroneously relied in part on its finding that average quarterly and average daily allowable opacity levels would not be affected by Alabama's requested SIP revisions in finding that the revisions were approvable under section 110(l), EPA proposes to conclude that its 2008 approval action was itself erroneous.

D. EPA Erred in Concluding That Alabama's Requested SIP Revisions Did Not Establish an Automatic Exemption From an Emission Limitation in Violation of CAA Section 302(k)

In approving Alabama's requested SIP revisions in 2008, EPA also erred by failing to recognize that Alabama's requested SIP revisions functionally established an automatic exemption from an emission limitation in violation of CAA section 302(k), 42 U.S.C. 7602(k). If EPA had correctly identified this issue, EPA would not have taken the 2008 action approving Alabama's 2003 and 2008 SIP submittals, nor would it have been authorized to do so. *See* CAA section 110(l) (''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . *or any other applicable requirement* of this chapter.'' (emphasis added). Therefore, EPA proposes to conclude that its failure to recognize that Alabama's requested SIP revisions violated section 302(k) rendered its 2008 approval action erroneous and in need of correction under CAA section 110(k)(6).

The section 302(k) violation arises from the provision in Alabama's requested SIP revisions that authorizes, for sources that meet the revised rule's criteria, up to 24 six-minute averages of 100 percent opacity per calendar day.[17]

[15] EPA has not yet finalized this proposal. EPA notes that there is also an ongoing error correction process to address whether an unrelated action erroneously approved the SIP revision.

[16] Assuming no excluded periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit), there are 240 six-minute periods in a 24-hour day.

[17] Whether a source could take advantage of the full allocation of 24 six-minute averages per day of 100 percent opacity depends on its operating hours;

See AAC Chapter 335–3–4–.01(4). Because 100 percent opacity is the maximum level of opacity possible, the allowance of up to 24 six-minute averages of 100 percent opacity per calendar day functionally equates to an exemption from the otherwise applicable SIP emission limitation for those periods.[18]

Section 302(k) defines ''emission limitation'' for CAA purposes, in relevant part, as ''a requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis. . . .''[19] Alabama's opacity rule is incorporated into Alabama's SIP to satisfy CAA section 110(a)(2)(A), which requires that each SIP include ''enforceable *emission limitations and other control measures,* means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of this chapter.'' (emphasis added). Thus, Alabama's opacity rule constitutes an ''emission limitation'' under the CAA and is subject to that term's definition in CAA section 302(k). By functionally carving out an exemption from the opacity limitation for up to 24 six-minute averages per day, Alabama's requested SIP revisions contravene section 302(k)'s unambiguous requirement that an emission limitation restrict emissions ''on a continuous basis.'' *See, e.g., Sierra Club* v. *EPA,* 551 F.3d 1019, 1027–1028 (D.C. Cir. 2008) (vacating an exemption for startup, shutdown, and malfunction periods contained in federal regulations issued under CAA section 112 on the basis that ''[w]hen sections 112 and 302(k) are read together,'' the CAA ''require[es] that some section 112 standard apply continuously.''); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012) (denying a petition for review challenging EPA's issuance of a section 110(k)(5) SIP call requiring Utah to revise its SIP to eliminate a provision that automatically exempted sources from SIP compliance during unavoidable equipment breakdowns; the SIP call was based, *inter alia,* on section 302(k)'s requirement that emission limitations apply on a continuous basis).

In a recent proposed rulemaking, EPA explained as a technical, legal and policy matter why rules that authorize automatic exemptions from emissions limits are inconsistent with the CAA and thus, unlawful. 78 FR 12460 (February 22, 2013) (''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' referred to as the ''SSM proposal''). Although the SSM proposal provides a useful synopsis of the applicable requirements under the CAA, EPA's position that the CAA prohibits automatic exemptions from SIP emission limitations has remained unchanged since at least 1982. *See* 78 FR 12489. The rationale provided in the SSM proposal for why SSM exemptions are contrary to the CAA's language and purpose applies equally to Alabama's requested opacity exemption.

When approving Alabama's requested SIP revisions in 2008, EPA responded to a public comment asserting that EPA's approval of Alabama's revised rule would violate section 302(k) in that it ''would be approving an 'automatic exemption' from certain emission limitations that must function on a 'continuous basis.'''' *See* 73 FR 60960. At the time, EPA responded that rather than creating an exemption from the rule, Alabama's SIP submittal involved ''revisions to the rule itself.'' *Id.* EPA contended that ''[a] source that meets the requirements of the revised standard will be in continuous compliance with the standard.'' *Id.* EPA also stated: ''The provisions of the CAA and its implementing regulations cited by the commenters do not require that all SIP measures require compliance with the same numerical emission limitation at all times.'' *Id.* Based on that analysis, EPA contended Alabama's requested SIP revisions did not violate section 302(k). *See* 73 FR 60960. EPA now proposes to conclude that its 2008 analysis of whether Alabama's requested SIP revisions violated section 302(k) was erroneous. First, EPA's argument in 2008 that Alabama's revised rule allowing periods of 100 percent opacity is lawful because the amended regulatory language appears in ''the rule itself'' is contrary to CAA section 302(k)'s plain language, which expressly requires that the ''emission limitation'' itself limit emissions on a continuous basis. Section 302(k) is not satisfied simply by requiring continuous compliance with a standard that does not itself apply on a continuous basis. Second, while EPA continues to agree with its statement in 2008 that SIP measures need not ''require compliance with the *same* numerical emission limitation at all times'' (emphasis added), EPA disagrees with the implication in EPA's 2008 response that Alabama's allowance of 100 percent opacity for up to 24 six-minute averages per day constitutes a ''numerical emission limitation'' at all. Rather, as explained above, because 100 percent opacity is the maximum opacity level possible, the revised rule's allowance of up to 24 six-minute averages of 100 percent opacity per calendar day functionally equates to an exemption from the emission limitation for those periods. As a result, many opacity exceedances that would have been violations of the previous rule are now exempted under the revised rule. Thus, EPA now proposes to conclude that the SIP revision requested in Alabama's 2003 and 2008 submittals do, in fact, violate section 302(k), and therefore, that EPA's 2008 action approving Alabama's requested SIP revisions was erroneous.

E. EPA Erred by Failing To Evaluate Whether Alabama's Requested SIP Revisions Complied With CAA Section 193

In approving Alabama's requested SIP revisions in 2008, EPA also erred by failing to consider whether the requested revision was consistent with CAA section 193. Section 193 provides: ''No control requirement in effect . . . before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' *See* 42 U.S.C. 7515. Congress added this provision in the 1990 Amendments as part of an effort to ensure adequate support for NAAQS attainment and maintenance. Consistent with the provision's plain text, Congress' intent in adopting this provision was to provide a 'back-up' anti-backsliding provision for nonattainment areas

under the revised rule, periods of opacity above 20 percent are limited to a total of 2.0 percent of the source calendar quarter operating hours for which the opacity standard is applicable and for which the COMS is indicating valid data.

[18] Regulatory provisions previously incorporated into Alabama's SIP (under Alabama rule 335–3–4–.01(1)(c) and (d)) authorize ADEM's Director to approve source-specific exceptions to the opacity standard for startup, shutdown, load change, and rate change or other short, intermittent periods of time upon terms approved by the Director and made part of a source's permit. Because Alabama's 2003 and 2008 SIP submittals did not request a revision to these provisions, EPA did not address these provisions in its 2008 approval action. *See* 73 FR 60958 n. 1. Nothing in this notice should be construed as a determination by EPA that these provisions are consistent with CAA requirements.

[19] In full, CAA section 302(k) defines ''emission limitation as ''a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice or operational standard promulgated under this chapter.''

beyond what was provided by 110(l).[20] Because Alabama's 2003 and 2008 SIP submittals proposed to revise a ''control requirement'' that was ''in effect before November 15, 1990'' and that applied to PM nonattainment areas (see section I.D. above), EPA's 2008 action should have included an analysis for why Alabama's requested SIP revisions did not contravene CAA section 193. Because such an analysis is a critical prerequisite to approving any modification to a pre-1990 control requirement, EPA proposes to conclude that the lack of such an analysis made EPA's 2008 approval of Alabama's 2003 and 2008 SIP submittals erroneous.[21]

III. Basis of EPA's Proposal To Disapprove Alabama's SIP Revisions Related to Visible Emissions

Upon reconsideration of available information, and in light of the errors in EPA's 2008 analysis described above, EPA now proposes pursuant to its error correction authority under CAA section 110(k)(6) to disapprove Alabama's 2003 and 2008 SIP revisions.

A. Alabama's Requested SIP Revisions Are Not Approvable Under CAA Section 110(l)

As explained above, upon reconsideration of the available information, EPA now proposes to conclude that Alabama's requested SIP revisions would interfere with attainment and maintenance of the PM NAAQS and are therefore not approvable under CAA section 110(l). Specifically, in EPA's technical judgment, the increased opacity levels authorized by Alabama's revised rule would, more likely than not, be associated with increased PM emissions in some cases. Under circumstances such as this where EPA concludes that a SIP revision would allow increased emissions, EPA assumes that the relaxation would interfere with NAAQS attainment and maintenance in the absence of a contemporaneous attainment demonstration or other air quality analyses demonstrating that the relaxation will not, in fact, interfere with NAAQS attainment and maintenance. Because Alabama made no such demonstration, EPA proposes to conclude that Alabama's 2003 and 2008 SIP revisions are not approvable under CAA section 110(l). Therefore, pursuant to its error correction authority under CAA section 110(k)(6), EPA now proposes to disapprove Alabama's 2003 and 2008 Submittals.

EPA's proposed conclusion that Alabama's requested SIP revisions ''would interfere'' with PM NAAQS attainment and maintenance and therefore is not approvable under CAA section 110(l) remains the same regardless of whether EPA applies its current interpretation of CAA section 110(l) or its 2008 interpretation. The fundamental difference between these two interpretations pertains to how they address uncertainty regarding whether a SIP relaxation would allow increased emissions. Under the 2008 interpretation, EPA assumed that a SIP relaxation would not interfere with NAAQS attainment and maintenance unless available information demonstrated that, more likely than not, the relaxation would allow increased emissions. Under EPA's current interpretation, EPA assumes that a SIP relaxation would allow increased emissions, and thereby interfere with NAAQS attainment and maintenance, unless available information indicates that, more likely than not, the revision will not allow increased emissions. In other words, in the face of uncertainty, EPA's current interpretation of CAA section 110(l) errs on the side of protecting air quality. However, in EPA's technical judgment, available information is sufficient to demonstrate that, more likely than not, Alabama's 2003 and 2008 Submittals would allow increased PM emissions in some circumstances. Thus, even under EPA's less protective 2008 interpretation, EPA now proposes to conclude that Alabama's 2003 and 2008 Submittals are not approvable under CAA section 110(l).

In addition to interfering with attainment and maintenance of the PM NAAQS, EPA proposes to conclude that Alabama's requested SIP revisions are not approvable under CAA section 110(l) because it interferes with the requirements of CAA section 302(k). Specifically, as explained earlier in this notice, CAA section 302(k) requires that any ''emission limitation'' adopted under the CAA apply ''on a continuous basis,'' and Alabama's SIP opacity rule constitutes an ''emission limitation'' that must meet CAA section 302(k)'s requirements. By authorizing emissions with up to 100 percent opacity for up to 24 six-minute averages per day, Alabama's revised opacity rule effectively exempts sources from compliance with opacity restrictions during those periods. As a result, the revised opacity rule would not apply to sources ''on a continuous basis,'' in contravention of CAA section 302(k). For this additional reason, EPA proposes to conclude that Alabama's 2003 and 2008 SIP submittals are not approvable under CAA section 110(l).

B. Alabama's Requested SIP Revisions Are Not Approvable Under CAA Section 193

Under CAA section 193, ''[n]o control requirement in effect . . . before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' As discussed above, because Alabama's opacity requirements were incorporated into the SIP well before November 15, 1990, and because the requested opacity revision applied in nonattainment areas, EPA should have evaluated whether Alabama's 2003 and 2008 Submittals complied with CAA section 193 prior to its 2008 approval action. EPA notes that when correcting an error pursuant to section 110(k)(6), we must evaluate whether there was an error in light of the circumstances that existed at the time of the original action. Subsequent to its 2008 approval action, EPA redesignated most of Alabama's PM nonattainment areas to attainment. Nonetheless, one Alabama area continues to be designated nonattainment for the 1997 $PM_{2.5}$ NAAQS: the Jackson County portion of the Chattanooga nonattainment area.[22] Section 193 is applicable for nonattainment areas until such time that EPA takes final action to redesignate an area to attainment.[23] Thus, whether evaluated under the facts and circumstances of 2008 or today,

[20] *See, e.g.,* Senate Debate on the 1990 Amendments to the CAA Conference Report (Oct. 26, 1990), 1990 CAA Legis. Hist. 1097, 1126–1127 (Comments of Senator Chafee, R–RI, primary drafter of CAA Amendments of 1990).

[21] In EPA's 2011 final action disapproving Alabama's 2003 and 2008 SIP submittals under CAA section 110(l), which the 11th Circuit subsequently vacated, EPA noted that it did not complete a section 193 analysis because the Submittals already were not approvable. EPA also noted that if Alabama's requested SIP revisions did not interfere with NAAQS attainment and maintenance it was unlikely to interfere with other requirements of the Act. However, even assuming for the sake of argument that such statement would suffice as a section 193 analysis had it been included in the 2008 final notice, it was not included in that notice and therefore cannot serve as a basis for the 2008 approval.

[22] While Alabama submitted a SIP revision to EPA that proposes a maintenance plan and a request to redesignate the Jackson County nonattainment area to attainment for the 1997 $PM_{2.5}$ NAAQS, this SIP revision is still under review.

[23] EPA previously determined that this Area met the 1997 $PM_{2.5}$ NAAQS based on air quality data at the time, and also made the determination that this Area attainment the 1997 $PM_{2.5}$ NAAQS by its attainment date. *See* 76 FR 31239 (May 31, 2011) and 76 FR 55774 (September 8, 2011). However, these determinations do not constitute a redesignation of the Area from nonattainment to attainment.

Alabama's requested SIP revisions must satisfy section 193 to be approvable.

Given EPA's conclusion that the opacity increases authorized by Alabama's requested SIP revision would, more likely than not, be associated with increased PM emissions in some cases, CAA section 193 bars EPA's approval unless the State demonstrates that its 2003 and 2008 SIP revisions offset such PM increases with equivalent or greater emission reductions. Nothing in the record for this action indicates that the Submittals include any mechanism to obtain such offsetting PM emission reductions. Therefore, EPA proposes to conclude that Alabama's 2003 and 2008 Submittals do not meet section 193's requirements and, as a result, must be disapproved.

IV. Proposed Actions

Today, EPA is proposing to take action to reconsider its previous approval of Alabama's visible emission rule in October 2008. In summary, EPA is proposing to determine, pursuant to CAA section 110(k)(6), that it erred in approving the Submittals (dated September 11, 2003, and August 22, 2008) in 2008 for the reasons outlined in Section II of this proposed rulemaking. Consequently, EPA is also proposing to disapprove the Submittals. Should this proposed action be finalized, the version of Alabama's visible emissions rule that was approved in the SIP prior to EPA's October 15, 2008, final action will be the ''current'' SIP-approved rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a significant regulatory action and is therefore not subject to Office of Management and Budget review.

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and therefore is not subject to these requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 of the CAA do not create any new requirements. Therefore, because the Federal SIP disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 US 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to disapprove a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 24, 2014.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2014–02938 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0133; 4500030113]

RIN 1018–AY78

Endangered and Threatened Wildlife and Plants; Remove the Modoc Sucker From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month petition finding; notice of availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Modoc sucker (*Catostomus microps*) from the Federal List of Endangered and Threatened Wildlife. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended (Act). If finalized, the effects of this rule would be to remove the Modoc sucker from the List of Endangered and Threatened Wildlife. This proposed rule, if made final, would also remove the currently designated critical habitat for the Modoc sucker throughout its range. This document also constitutes our 12-month finding on a petition to reclassify the Modoc sucker from endangered to threatened. We are seeking information and comments from the public regarding this 12-month finding and proposed rule. In addition to the proposed rule, we are also seeking information and comments on the draft post-delisting monitoring plan.

DATES: We will accept comments received or postmarked on or before April 14, 2014. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 31, 2014.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2013–0133, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0133; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

Document availability: A copy of the Species Report referenced throughout this document can be viewed at *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=E053,* at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0133, or at the Klamath Falls Fish and Wildlife Office's Web site at *http://www.fws.gov/klamathfallsfwo.* The draft post-delisting monitoring plan will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*), and the Klamath Falls Fish and Wildlife Office Web page (*http://fws.gov/klamathfallsfwo*), and on the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laurie Sada, Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California Avenue, Klamath Falls, OR 97601; by telephone 541–885–8481, or by facsimile 541–885–7837. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend any final action resulting from this proposal to be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the

scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological information on Modoc sucker, including additional information on its distribution, population size, and population trend;

(2) Relevant information concerning any current or likely future threats (or lack thereof) to Modoc sucker, including the extent and adequacy of Federal and State protection and management that would be provided to Modoc sucker as a delisted species;

(3) Current or planned activities within the range of Modoc sucker and their possible impacts to the species;

(4) Regional climate change models and whether they are reliable and credible to use in assessing the effects of climate change on Modoc sucker and its habitat;

(5) Our draft post-delisting monitoring plan. We request information regarding how best to conduct post-delisting monitoring, should the proposed delisting lead to a final delisting rule (see Post-Delisting Monitoring Plan Overview section below, which briefly outlines the goals of the draft plan that is available for public comment concurrent with publication of this proposed rule). Such information might include suggestions regarding the monitoring focus, procedures for determining site occupancy and abundance, or for monitoring threats and recruitment over the course of at least 5 years.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. We must receive your request within 45 days after the date of this **Federal Register** publication. Send your request to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Previous Federal Action

On January 31, 1984, we proposed to list the Modoc sucker as an endangered species and designate critical habitat under the Act based on threats from habitat degradation and loss due to activities (such as overgrazing by cattle) that cause erosion and siltation (49 FR 3892). These activities and resulting erosion were thought to have eliminated natural barriers separating Modoc suckers and the Sacramento suckers (*Catostomus occidentalis*), allowing hybridization and a loss of genetic integrity of Modoc sucker. We published a final rule listing Modoc sucker as an endangered species and designating critical habitat in the **Federal Register** on June 11, 1985 (50 FR 24526). The final rule also included predation by the nonnative brown trout (*Salmo trutta*) as a threat to Modoc sucker.

Under the Act, we maintain the Lists of Endangered and Threatened Wildlife and Plants in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants) (Lists). We amend the Lists by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine: (1) Whether a species no longer meets the definition of endangered or threatened and should be removed from the Lists (delisted), (2) whether a species listed as endangered more properly meets the definition of threatened and should be reclassified to threatened (downlisted), or (3) whether a species listed as threatened more properly meets the definition of endangered and should be reclassified to endangered (uplisted). In accordance with 50 CFR 424.11(d), using the best scientific and commercial data available, we will consider a species for delisting only if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered recovered; or (3) the original data available when the species was listed, or the interpretation of such data, were in error.

We published a notice announcing the initiation of a review of the status of Modoc sucker under section 4(c)(2) of the Act on March 22, 2006 (71 FR 14538). We notified the public of completion of the 5-year review on May 21, 2010 (75 FR 28636). The 5-year review, completed on August 17, 2009 (Service 2009), resulted in a recommendation to change the status of the species from endangered to threatened. A copy of the 2009 5-year review for Modoc sucker is available on the Service's Environmental Conservation Online System (*http://http://ecos.fws.gov/docs/five_year_review/doc2546.pdf*).

On December 21, 2011, we received a petition dated December 19, 2011, from the Pacific Legal Foundation, requesting the Service to reclassify the Modoc sucker from endangered to threatened. The petition was based on the analysis and recommendations contained in the most recent 5-year review. On June 4, 2012 (77 FR 32922), we published in the **Federal Register** a 90-day finding for the 2011 petition to reclassify the species. In our 90-day finding, we determined the 2011 petition provided substantial information indicating the petitioned actions may be warranted, and we initiated a status review for Modoc sucker. This proposed rule to remove the Modoc sucker from the Federal List of Endangered and Threatened Wildlife also constitutes the 12-month finding for the species.

Background

A completed scientific analysis is presented in detail in the Modoc Sucker Species Report (Service 2013, entire), which is available at *http://www.regulations.gov* at Docket Number

FWS–R8–ES–2013–0133. The Species Report was prepared by Service biologists to provide thorough discussion of the species ecology, biological needs, and analysis of the threats that may be impacting the species. The Species Report includes discussion of the following: Taxonomy and species description, habitat, biology, distribution and abundance, summary of factors affecting the species, and recovery. This detailed information is summarized in the following paragraphs of this Background section, the Recovery and Recovery Plan Implementation section, and the Summary of Factors Affecting the Species section.

The Modoc sucker is a small species of fish in the family Catostomidae. Individuals measure 2.8 to 3.3 inches (70 to 85 millimeters) in length at full maturity, with few adults exceeding 6.3 to 7.1 in (160 to 180 mm). Modoc suckers are opportunistic feeders with diets consisting of algae, small benthic invertebrates, and detritus.

Modoc sucker are primarily found in relatively small (second to fourth order), perennial and intermittent streams. They occupy an intermediate zone between the high-gradient and higher-elevation, coldwater trout zone and the low-gradient and low-elevation, warm-water fish zone. The pool habitat occupied by Modoc suckers generally includes fine sediments to small cobble bottoms, substantial detritus, and abundant cover. Spawning habitat appears to include gravel substrates in the relatively low-energy, flowing portions of pools or the protected area downstream of rocks (Reid 2008a). During low summer flows, pools inhabited by Modoc suckers can become isolated, which eliminates interaction of suckers within and among streams. Cover can be provided by overhanging banks, larger rocks, woody debris, and aquatic rooted vegetation or filamentous algae. Larvae occupy shallow vegetated margins; juveniles tend to remain free-swimming in the shallows of large pools, particularly near vegetated areas; and larger juveniles and adults remain mostly on, or close to, the bottom (Martin 1972; Moyle and Marciochi 1975; Moyle 2002).

At the time of listing, the species was known to occupy seven streams in the Turner Creek (Turner Creek, Washington Creek, and Hulbert Creek) and Ash Creek (Johnson Creek, Rush Creek, Dutch Flat Creek, and Ash Creek) sub-basins of the Pit River drainage in northeastern California. However, three of those streams (Rush Creek, Dutch Flat Creek, and Ash Creek) and a fourth (Willow Creek) in the Ash Creek sub-basin were presumed lost due to hybridization with Sacramento suckers (*Catostomus occidentalis*). It is now recognized that the historical distribution also included one additional stream (Garden Gulch Creek) in the Turner Creek sub-basin and three additional streams in the Goose Lake sub-basin (Thomas Creek, an unnamed tributary to Thomas Creek, and Cox Creek) in southern Oregon, a disjoined, upstream sub-basin of the Pit River. Also, a population has been established in Coffee Mill Creek in the Turner Creek sub-basin—a stream not known to have been occupied at the time of listing—as a result of California Department of Fish and Wildlife transplanting efforts.

The current known distribution of Modoc sucker includes an estimated 42.5 miles (68.4 kilometers) of occupied habitat in 12 streams within 3 sub-basins, compared to an estimated distribution of 12.9 miles (20.8 kilometers) of occupied habitat in 7 seven streams within 2 sub-basins at the time of listing. Although population trend data is not available because survey methods have varied among years, surveys indicate that Modoc sucker populations still occur in all streams where Modoc sucker populations were known to occur historically. Surveys also indicate that Modoc suckers appear to occupy nearly all available suitable habitat within the streams where they occur in the Turner Creek, Ash Creek, and Goose Lake sub-basins. Land ownership throughout the species' range is 51 percent public lands (primarily the Modoc National Forest in northeastern California and the Fremont-Winema National Forests in southern Oregon), 48 percent private lands, and 1 percent State land.

For a detailed discussion of Modoc sucker taxonomy and species description, habitat, biology, and distribution and abundance, please see the ''Background'' section of the Species Report, which includes subsections on ''taxonomy and species description'', ''habitat'', ''biology'', and ''distribution and abundance'' (Service 2013, pp. 5–23).

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat 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 human-made factors affecting its continued existence. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should indicate when a species is no longer an endangered species or threatened species under the five statutory factors.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

At the time of listing, the Service, the California Department of Fish and Wildlife (CDFW), and the U.S. Forest Service (USFS) were developing an ''Action Plan for the Recovery of the Modoc sucker'' (Action Plan). The April 27, 1983, revision of this Action Plan was formally signed by all participants in 1984 (Service 1984). We determined that the Action Plan and its 1989 revisions (Service 1984, 1989) adequately fulfilled the requirements of a recovery plan, and in a 1992 memorandum from the Regional Director (Region 1) to the Service's Director, we adopted it as the Recovery Plan for the Modoc sucker (Service 1992) and determined we would not

prepare a separate recovery plan pursuant to section 4(f) of the Act.

The Recovery Plan included downlisting and delisting objectives (considered to be equivalent to criteria). Below, we outline the objectives to reclassify the Modoc sucker from endangered to threatened and the objectives to remove Modoc sucker from the List of Endangered and Threatened Wildlife, and we discuss progress towards meeting the objectives.

Downlisting objective 1: Maintain the integrity of extant habitats and prevent the invasion of Sacramento suckers into isolated stream reaches of the Turner-Hulbert-Washington Creek system and upper Johnson Creek. The intent of meeting this objective was to halt the threat of further loss and degradation of habitat (Factor A) and to address the threat of genetic introgression from hybridization with Sacramento sucker (Factor E).

Downlisting objective 2: Restore and maintain the quality of aquatic habitat conditions within these watersheds and thereby increase their carrying capacity for Modoc suckers. The intent of this objective was to further address habitat loss and degradation (Factor A) through active restoration, with the ultimate goal to allow the habitat to support an increase in population numbers. These efforts would improve the resiliency of the species (ability to withstand and recover from stochastic events, such as drought).

Downlisting objective 3: Secure populations of Modoc sucker have been maintained in these creeks for 3 consecutive years. The intent of this objective was to monitor Modoc sucker populations to ensure recruitment had occurred and is based on the life history of Modoc suckers, in which individuals mature at age 2+ years.

Since the time of listing, actions have been taken to maintain or improve Modoc sucker habitat within Turner Creek, Hulbert Creek, Washington Creek, and Johnson Creek as it relates to downlisting objectives 1 and 2. The Service and partners have implemented projects and management that maintain the integrity of extant habitat (downlisting objective 1) and restore and maintain the quality of habitat (downlisting objective 2) to provide effective stabilization of stream banks, fencing to exclude livestock grazing in riparian areas, restoration of riparian vegetation, and increased instream habitat. On public lands, 1.5 miles of Washington Creek, 0.2 mi of Hulbert Creek, 0.5 mi of Coffee Mill Creek, and approximately 1.5 mi of Turner Creek have been fenced to protect riparian habitat (Reid 2008a, p. 85; M. Yamagiwa, USFS, personal communication). Additionally, since Modoc sucker was listed in 1985, fencing has been constructed to exclude cattle on Rush Creek and Johnson Creek below Higgins Flat (Modoc National Forest). Fencing led to immediately protecting extant habitat (immediate, near term), and allowed habitat to recover. This improved the quality and carrying capacity in the long term, thus addressing downlisting objectives 1 and 2. Extensive landowner outreach by the Service, USFS, and State agencies, and improved livestock grazing management practices in Modoc and Lassen Counties have also resulted in improved protection of riparian corridors on private lands in the Turner and Ash Creek sub-basins. Protection of riparian habitat by excluding cattle and by improving livestock grazing management practices on both public and private lands has resulted in improved habitat conditions along these streams as a result of reduced erosion and improved vegetative and hydrologic characteristics (Reid 2008a, pp. 41, 85–86).

Active habitat restoration (downlisting objective 2) has been implemented in many locations throughout the species range since the species was listed. Restoration on the Modoc National Forest has led to improved habitat conditions in riparian areas along many of the streams occupied by Modoc suckers. Willows have been planted along portions of streams occupied by Modoc suckers in the Turner Creek and Ash Creek sub-basins to stabilize streambanks and provide shading and cover (Reid 2008a, pp. 85–86; USFS 2008, p. 16). As a result of riparian habitat improvements and improved livestock grazing management practices, channel widths have narrowed and created deeper habitat preferred by Modoc suckers (USFS 2008, p. 16). Other habitat restoration activities include juniper revetment (the use of cut juniper trees to stabilize streambanks), creation and expansion of pool habitat, placement of boulders within streams to provide cover and shade, and restoration of channel headcuts (areas of deep erosion) to prevent further downcutting of channels (Reid 2008a, pp. 85–86; USFS 2008, p. 16).

Habitat conditions in designated critical habitat and other occupied streams have steadily improved since listing and have sustained populations of Modoc suckers for at least 25 years, although recent habitat surveys indicate erosion and sedimentation continue to be a problem along lower Turner Creek. However, this degraded reach amounts to 2.4 percent (1.01 mi/42.5 mi) of the total length of streams occupied by Modoc sucker. Land management practices employed on public and private lands since the early 1980s are expected to continue, or improve, thereby maintaining stable to upward habitat trends. Thus, we believe the integrity of extant habitat has been maintained (part of downlisting objective 1) and the quality of habitat has been restored and maintained through restoration efforts (downlisting objective 2), and we conclude that these portions of the downlisting objectives have been met.

While part of downlisting objective 1 was to prevent invasion of Sacramento sucker, further research into the magnitude and consequences of genetic introgression with Sacramento suckers has led us to conclude that this part of the objective is no longer relevant. Observed levels of genetic introgression by Sacramento suckers in streams dominated by Modoc suckers are low, even when there are no physical barriers between the two species (Topinka 2006, pp. 64–65). This suggests that either ecological differences, selective pressures, or other natural reproductive-isolating mechanisms are sufficient to maintain the integrity of the species, even after more than a century of habitat alteration by human activities. Currently, only Ash Creek exhibits a considerable degree of introgression. Scientists who have studied suckers in western North America consider that, throughout their evolutionary history, hybridization among sympatric native fishes is not unusual and may actually provide an adaptive advantage (Dowling and Secor 1997, pp. 612–613; Dowling 2005, p. 10; Topinka 2006, p. 73; Tranah and May 2006, p. 313). Reexamination of information on natural barriers, morphological characters, and new genetic information that were unavailable at the time of listing indicate that hybridization is not a threat to the Modoc sucker and may be part of its natural evolutionary history. Thus, because of the new information that has become available since the time of listing, we believe this portion of the downlisting criterion, to prevent the invasion of Sacramento suckers, is obsolete and no longer needs to be met.

Several estimates of population size of Modoc suckers in Turner Creek, Hulbert Creek, Washington Creek, and Johnson Creek have been completed since the 1970s, which found that Modoc sucker populations have been maintained in the Turner-Hulbert-Washington Creek system and upper Johnson Creek for 3 consecutive years (downlisting objective 3). Modoc suckers appear broadly

distributed throughout suitable habitat in these streams. Although the observations during each survey may not be directly comparable due to differences in sampling methods, there does not appear to be any major changes in observations of these stream populations over time. Observations of Modoc suckers in Hulbert Creek and Johnson Creek prior to 2008 appear to be greater than observations made in 2008 and 2012. However, this may be explained by differences in survey methods, inclusion of young-of-the-year suckers in earlier counts, and the fact that some numbers reported are population estimates rather than counts on individuals. Although population monitoring has not been conducted on an annual basis, sucker surveys conducted in 2008 and 2012 show that Modoc sucker populations have been maintained, and are still well established, in Turner Creek, Washington Creek, Hulbert Creek, and Johnson Creek—as well as each of the other streams known to be occupied at the time of listing—more than 25 years after listing. Thus, we believe that populations of Modoc sucker have been maintained (remained stable), demonstrating successful recruitment given that individuals mature at 2+ years, and that downlisting objective 3 has been met.

Delisting objective 1: The remaining suitable, but presently unoccupied, stream reaches within Turner-Hulbert Creek-Washington Creek and Rush-Johnson Creek drainages must be renovated and restored to Modoc sucker. The intent of this objective was to further address habitat loss and degradation (Factor A) through active restoration. Once occupied, these stream reaches would demonstrate that the habitat is restored and has expanded. This restoration will allow the habitat to support an increase in population numbers, improving redundancy (having multiple populations that provide security from the risk of extinction of the spices given the low probability that all populations will be negatively affected by a single catastrophic event) and resiliency (ability to withstand and recover from stochastic events, such as drought) of the species.

Delisting objective 2: Secure populations of Modoc suckers must be reestablished in at least two other streams outside of the above drainages, but within the historical range. The intent of this objective was to increase both habitat available and the number of populations, thereby increasing redundancy of the Modoc sucker populations.

Delisting objective 3: All populations must have sustained themselves through a climactic cycle that includes drought and flood events. This objective was intended to indicate that Modoc suckers have responded positively to habitat protection and restoration and have a sufficient number of populations and individuals to withstand and recover from environmental variability and stochastic events.

At the time of listing, it was estimated that Modoc suckers occupied 2.0 mi (3.2 km) of habitat in Turner Creek, 0.8 mi (1.3 km) of habitat in Hulbert Creek, 0.5 mi (0.8 km) of habitat in Washington Creek, 4.6 mi (7.4 km) in Rush Creek, and 1.2 mi (1.9 km) of habitat in Johnson Creek (Reid 2008a, p. 25). Since the time of listing, Reid (2008a, p. 25) estimated that there was 5.5 mi (8.9 km) of available habitat in Turner Creek, 3.0 mi (4.8 km) in Hulbert Creek, 4.1 mi (6.6 km) in Washington Creek, 4.6 mi (7.4 km) in Rush Creek, and 2.7 mi (4.3 km) in Johnson Creek. Habitat conditions along Turner Creek, Hulbert Creek, Washington Creek, and Johnson Creek have improved since the time of listing. Modoc suckers currently occupy all available habitats within Turner Creek, Hulbert Creek, Rush Creek, and Johnson Creek; Modoc suckers occupy 3.4 mi (5.5 km) of the available habitat in Washington Creek (Reid 2008a, p. 25). Therefore, we believe delisting objective 1 has been met.

The Recovery Plan stated that additional populations were needed to provide population redundancy (delisting objective 2). New information indicates the presence of Modoc sucker populations in four streams that were not known to be occupied at the time of listing (Garden Gulch Creek in the Turner Creek sub-basin and Thomas Creek, an unnamed tributary to Thomas Creek, and Cox Creek in the Goose Lake sub-basin). In addition, a population of Modoc sucker has been established as a result of transplanting in Coffee Mill Creek in the Turner Creek sub-basin. In 1987, CDFW transplanted Modoc suckers from Washington Creek to Coffee Mill Creek to establish an additional population in the Turner Creek sub-basin (CDFW 1986, p. 11). Modoc suckers appear to be well established and relatively abundant; spawning adult and juvenile suckers have been consistently observed there during visual surveys (Reid 2009, p. 25). Therefore, we believe that the intent of delisting objective 2 has been met by the discovery of Modoc sucker populations in additional locations and the establishment of one population.

The northwestern corner of the Great Basin where the Modoc sucker occurs is naturally subject to extended droughts, during which even the larger water bodies such as Goose Lake have dried up (Laird 1971, pp. 57–58). Regional droughts have occurred every 10 to 20 years in the last century (Reid 2008, pp. 43–44). Collections of Modoc suckers from Rush Creek and Thomas Creek near the end of the ''dustbowl'' drought of the 1920s to 1930s (Hubbs 1934, p. 1; Reid 2008a, p. 79) indicate that the species was able to persist in those streams even through a prolonged and severe drought. Modoc suckers have persisted throughout the species' historical range since the time it was listed in 1985, even though the region has experienced several pronounced droughts as well as heavy-precipitation, high-water years (for example, 2011), indicating that the species is at least somewhat resilient to weather and hydrologic fluctuations. Therefore, we believe delisting objective 3 has been met.

The Recovery Plan was based on the best scientific and commercial information available at the time. In evaluating the extent to which recovery objectives have been met, we must also assess new information that has become available since the species was listed and the recovery action plan prepared. As noted above, research and new information since the time of listing and the recovery action plan indicate that hybridization and introgression with Sacramento sucker is not a substantial threat to Modoc suckers. Additionally, Modoc suckers were found occupying areas they were not known to occupy at the time of listing. This new information alters the extent to which the recovery objectives related to hybridization and establishing new populations need to be met. In the case of hybridization and genetic introgression, we found that objective no longer relevant given the lack of threat to the species. With regard to the objective to establish new populations, we found that the discovery of additional populations substantially met the intent of the objective to provide for population redundancy so that reestablishing two additional populations was no longer needed.

Additionally, we must assess whether a recovery plan adequately addresses all the factors affecting the species. The recovery objectives did not directly address predation by brown trout and other nonnative fish or the point at which that threat would be ameliorated, although actions were included. Since the time of listing, additional predatory nonnative fish have been recorded in streams containing Modoc suckers. Actions to address nonnative predatory

species and an assessment of their impact are discussed below. While not specific to predatory nonnative fish, attainment of delisting objective 3, indicating that Modoc sucker populations have sustained themselves since listing in 1985, provides some indication that nonnative predatory fish are no longer a serious threat to the species' persistence. Climate change is an additional threat identified since listing and preparation of the Recovery Plan. All threats, including those identified since listing and preparation of the Recovery Plan are further discussed below. Based on our analysis of the best available information, we conclude that the downlisting and delisting objectives have been substantially met. Additional threats not directly addressed in the recovery objectives are discussed below. Additional information on recovery and recovery plan implementation are described in the ''Recovery'' section of the Species Report (Service 2013, pp. 58–65).

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of any one or a combination 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 human-made factors affecting its continued existence. A species may be reclassified on the same basis.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term ''foreseeable future.'' For the purposes of this rule, we define the ''foreseeable future'' to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be made concerning the future as it relates to the status of Modoc sucker. Specifically, for Modoc sucker, we consider two factors: the management of threats and the response of the species to management. First, as described below, the threats to the species have been successfully ameliorated, largely due to management plans that are currently in place and expected to stay in place, and that are expected to successfully continue to control potential threats (USFS 1989, entire; USFS 1991, entire). Management plans that consider natural resources are required by law for all Federal lands on which Modoc sucker occurs, which encompasses greater than 50 percent of the species' range. Management plans are required to be in effect at all times and to be in compliance with various Federal regulations. Efforts to promote conservation of Modoc sucker habitat on private lands have been successful and are expected to continue into the future. Second, the Modoc sucker has demonstrated a quick positive response to management over the past 28 years since the species was listed; based on this, we anticipate being able to detect a species response to any changes in the management that may occur because of a plan amendment. Therefore, in consideration of Modoc sucker's positive response to management and our partners' commitment to continued management, as we describe below, we do not foresee that management practices will change and we anticipate that threats to the Modoc sucker will remain ameliorated into the foreseeable future. The word ''range'' in the significant portion of its range phrase refers to the range in which the species currently exists. For the purposes of this analysis, we first evaluate the status of the species throughout all its range, then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

At the time of listing, the primary threats to Modoc sucker were threats from habitat degradation and loss due to activities (such as overgrazing by cattle) that cause erosion and siltation, and eliminated natural barriers that resulted in loss of genetic integrity of the species due to hybridization with Sacramento suckers (*Catostomus occidentalis*). Predation by the nonnative brown trout (*Salmo trutta*) was also identified as a threat to Modoc sucker.

A thorough analysis and discussion of the current status review initiated with our 2012 90-day finding (77 FR 32922) is detailed in the Species Report (Service 2013, entire). The following sections provide a summary of the past, current, and potential future threats impacting the Modoc sucker. These threats include activities (such as overgrazing) that cause erosion and siltation (Factor A); elimination of natural barriers (Factor A); climate change and drought (Factor A); predation by nonnative species (Factors C); and hybridization and genetic introgression (infiltration of genes of another species) (Factor E).

Erosion and Cattle Grazing

The listing rule stated that activities (such as overgrazing) that cause a reduction in riparian vegetation, which then leads to stream erosion, siltation, and incision were a threat to the species. An increase in silt from eroding banks may fill in the preferred pool habitat of Modoc suckers and can cover gravel substrate used for spawning (50 FR 24526, June 11, 1985; Moyle 2002, p. 190). Sediment introduced into streams can adversely affect fish populations by inducing embryo mortality, affecting primary productivity, and reducing available habitat for macroinvertebrates that Modoc suckers feed upon (Moyle 2002, p. 191). However, land and resource management, as guided through regulations and policies, can effectively reduce or control threats to Modoc sucker.

The National Forest Management Act (NFMA) and regulations and policies implementing the NFMA are the main regulatory mechanisms that guide land management on the Fremont-Winema and Modoc National Forests, which constitute about 51 percent of Modoc suckers' range. Since listing, the Fremont-Winema National Forests (USFS 1989, entire) and Modoc National Forest (USFS 1991, entire) have each included Modoc sucker and their habitat in their resource management plans. These plans are required by

NFMA and the Federal Land Policy and Management Act of 1976 (FLPMA). The NFMA requires revision of the Plans every 15 years; however, plans may be amended or revised as needed. Management plans are required to be in effect at all times (in other words, if the revision does not occur, the previous plan remains in effect) and to be in compliance with various Federal regulations. The plans direct these national forests to maintain or increase the status of populations of federally endangered or threatened species and their habitats. In addition, these plans guide riparian management with a goal of restoring and maintaining aquatic and riparian ecosystems to their desired management potential (USFS 1989, Appendix p. 86; USFS 1991, pp. 4–26, Appendix pp. M–1–M–2).

Management direction for grazing on Forest-managed lands is provided through allotment management plans and permits, which stipulate various grazing strategies that will minimize adverse effects to the watershed and listed species. The allotment management plans outline grazing management goals that dictate rangeland management should maintain productive riparian habitat for threatened, endangered, and sensitive species (USFS 1995, p. 1). These grazing permits are valid for 10 years though operating instructions for these permits are issued on an annual basis. Also, as Federal agencies, the Fremont-Winema and Modoc National Forests comply with the National Environmental Policy Act process when evaluating potential land-disturbing projects or changes in National Forest management.

Although State lands comprise only 1 percent of Modoc suckers' range, both California and Oregon provide habitat protection. In California on State lands, the California Fish and Game Code affords protection to stream habitats for all perennial, intermittent, and ephemeral rivers and streams. In Oregon, the Oregon Department of Land Conservation and Development requires local land use planning ordinances to protect natural resources, including riparian and wetland habitats.

The improved livestock grazing management practices in these management plans have greatly reduced impacts to Modoc sucker habitat from poor livestock grazing practices since the time of listing. Since listing, some of the Modoc sucker streams on public land have been fenced to exclude or actively manage livestock grazing for the benefit of Modoc sucker conservation (Reid 2008a, pp. 34–36, 85). Riparian fencing along occupied streams to exclude cattle during the past 25 years has resulted in continued improvements in riparian vegetative corridors, in-stream cover, and channel morphology.

In 2012, the Klamath Falls Fish and Wildlife Office completed habitat surveys in Washington Creek, Garden Gulch Creek, Coffee Mill Creek, Dutch Flat Creek, Turner Creek, Hulbert Creek, and Johnson Creek within the Ash Creek and Turner Creek sub-basins. Data collected indicated that the average percent bank erosion was low (less than 40 percent) at Garden Gulch Creek, Coffee Mill Creek, Hulbert Creek, Washington Creek, and Johnson Creek. Bank erosion appeared moderate at the Dutch Flat Creek site (49 percent) and was highest at the Turner Creek site (75 percent). However, these two degraded reaches (Dutch Flat Creek and Turner Creek) combined amount to only 4.1 percent (1.76 mi/42.5 mi) of Modoc sucker's total occupied habitat. Bank erosion along these creeks has resulted in an introduction of silt, which can cover gravel substrate used for spawning by Modoc suckers (Moyle 2002, p. 191).

Land management practices employed on public and private lands since the early 1980s are expected to continue, or improve, thereby maintaining upward habitat trends as documented by survey data. On public lands, the resource management plans are required by NFMA and FLPMA and continue to be in effect until revised. Continued commitment to protection of resources, including Modoc sucker and riparian areas, in future revisions is expected. As an example, within the Fremont-Winema National Forest, Thomas Creek is a Priority Watershed under their Watershed Condition Framework, and the Forest is currently working on a watershed restoration action plan. The action plan will identify individual projects such as fish passage, instream restoration, and road treatments/closures. On State lands, the California Fish and Game Code affords protection to stream habitats for all perennial, intermittent, and ephemeral rivers and streams. The Oregon Department of Land Conservation and Development requires local land use planning ordinances to protect natural resources, including riparian and wetland habitats. However, there are no formalized agreements in place with private landowners that establish protection of Modoc sucker habitat, though continued outreach is expected to occur in the near future (e.g., through the Service's Partners for Fish and Wildlife Program).

Although the 2012 habitat surveys indicate that livestock grazing still results in stream bank erosion along streams occupied by Modoc suckers, these surveys and the 2008 and 2012 fish surveys indicate that livestock grazing management has improved greatly, and as a result of reduced impact to habitat, there has been no reduction in the distribution of Modoc suckers, and grazing results in erosion in only a small portion (4.1 percent) of the species' range. Management plans that consider natural resources are required by law for all Federal lands on which Modoc sucker occurs. Management plans are required to be in effect at all times (in other words, if the revision does not occur, the previous plan remains in effect) and to be in compliance with various Federal regulations. Further, several organizations have partnered with private landowners to complete habitat restoration on the private land parcels to benefit fish passage and riparian habitat. Therefore, based on the best available information and expectation that current management practices will continue into the future, we conclude that livestock grazing and erosion does not constitute a substantial threat to the Modoc sucker now and is not expected to in the future.

Elimination of Natural Barriers

The listing rule assumed that natural passage barriers in streams occupied by Modoc suckers had been eliminated by human activities, allowing hybridization between the Modoc and Sacramento suckers (see *Hybridization and Genetic Introgression* below). The lack of barriers was also thought to provide exposure to nonnative predatory fishes (see *Predation by Nonnative Species* below). However, surveys completed since the time of listing reveal no evidence of historical natural barriers that would have acted as a physical barrier. This is particularly true during higher springtime flows when Sacramento suckers make their upstream spawning migrations (Moyle 2002, p. 187). The source of this misunderstanding appears to have been a purely conjectural discussion by Moyle and Marciochi (1975, p. 559) that was subsequently accepted without validation, and Moyle makes no mention of it in his most recent account of Modoc sucker status (Moyle 2002, pp. 190–191). Since our current understanding is that the elimination of passage barriers did not occur, we conclude that elimination of passage barriers was incorrectly identified as a threat and is not a threat to Modoc sucker.

Predation by Nonnative Species

The listing rule identified predation by nonnative brown trout as a threat to Modoc suckers (50 FR 24526, June 11,

1985). Since the time of listing, additional predatory nonnative fish species have been recorded in streams containing Modoc suckers (Service 2009): Largemouth bass, sunfish (green and bluegill), and brown bullheads. Two of the three known sub-basins with Modoc suckers contain introduced predatory fishes. The Ash Creek sub-basin contains brown trout and possibly largemouth bass in downstream reaches of Ash Creek. The Turner Creek sub-basin contains a number of warm-water predatory fish. The Goose Lake sub-basin does not contain any nonnative predatory fish.

The Ash Creek sub-basin contains brown trout, which have co-existed with Modoc suckers for over 70 years, but may suppress local native fish populations in small streams. There are no sources of largemouth bass upstream of Modoc sucker populations in the Ash Creek basin, although they may be present downstream in warmer, low-gradient reaches of Ash Creek proper. A substantial eradication effort in Johnson Creek, within the Ash Creek sub-basin, in 2009 and 2010 removed most brown trout from occupied Modoc sucker habitat (Reid 2010, p. 2).

The Turner Creek sub-basin contains largemouth bass, sunfish (green and bluegill), and brown bullheads, of which only the bass are considered a significant predator on Modoc suckers. Bass do not appear to reproduce or establish stable populations in Turner Creek because the creek's cool-water habitat is generally unsuitable for supporting largemouth bass populations. Since 2005, the Service has supported a successful program of active management for nonnative fishes in the Turner Creek basin, targeting bass and sunfishes with selective angling and hand removal methods that do not adversely impact native fish populations (Reid 2008b, p. 1).

Redband trout, the only native potential predator of Modoc sucker, also occupies upper Thomas Creek, but there are no nonnative fishes (Scheerer *et al.* 2010, pp. 278, 281). The upper reaches of Thomas Creek occupied by Modoc suckers are unlikely to be invaded by nonnative fishes given the lack of upstream source populations and presence of a natural waterfall barrier in the lowest reach.

While Modoc suckers may be negatively impacted by introduced predatory fishes, such as brown trout and largemouth bass, they have persisted in the presence of nonnative predators, and populations have remained relatively stable in the Ash Creek and Turner Creek sub-basins prior to and since the time of listing. The separation of the three known basins containing Modoc suckers further reduces the probability that a new or existing nonnative predator would impact all three basins simultaneously. In some instances, natural constraints limit the distribution of nonnative predators, such as cool-water habitat. In other cases, natural or manmade barriers limit potential introductions, as do policies and regulations within Oregon and California. State regulations and fish stocking policies, in both California and Oregon, prohibit transfer of fish from one water body to another. Regulations prohibiting transfer of fish between water bodies discourage the spread of predatory fish species such as brown trout and largemouth bass throughout the Modoc sucker's range. In addition, CDFW has discontinued stocking of the predatory brown trout into streams in the Pit River basin, and the Oregon Department of Fish and Wildlife (ODFW) does not stock brown trout in the Goose Lake sub-basin. Based on current policies and regulations, we do not expect additional predatory fish to be introduced into Modoc sucker habitat in the future. Therefore, based on the best available information, we conclude that introduced predators do not constitute a substantial threat to the Modoc sucker now or in the future.

Climate Change and Drought

Our analyses under the Endangered Species 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.

The listing rule did not identify drought or climate change as threats to the continued existence of the Modoc sucker. However, the northwestern corner of the Great Basin is naturally subject to extended droughts, during which streams and even the larger water bodies such as Goose Lake have dried up (Laird 1971, pp. 57–58). Regional droughts have occurred every 10 to 20 years in the last century, and Goose Lake went dry as recently as 1992 and 2010 (Reid 2008a, pp. 43–44; R. Larson, KFFWO, personal communication). We have no records of how frequently Modoc sucker streams went dry. Some reaches of occupied streams have been observed to dry up (or flow goes subsurface through the gravel instead of over the surface) nearly every summer under current climatic conditions (Reid 2008, p. 42), indicating that headwater reaches did stop flowing. In extreme droughts, the suckers may have withdrawn to permanent main-stem streams, such as Rush, Ash, and Turner Creeks, and later recolonized the tributaries. Suckers also take refuge in natural spring-fed headwater reaches and in deeper, headwater pools that receive subsurface flow even when most of the stream channel is dry (Reid 2008, p. 43). Collections of Modoc suckers from Rush Creek and Thomas Creek near the end of the ''dustbowl'' drought (Hubbs 1934, p. 1; Reid 2008a, p. 79) and the continued persistence of Modoc suckers throughout its known range through substantial local drought years since 1985 demonstrate the resiliency of Modoc sucker populations to drought.

Human-induced climate change could exacerbate low-flow conditions in Modoc sucker habitat during future droughts. A warming trend in the mountains of western North America is expected to decrease snowpack, hasten spring runoff, reduce summer stream flows, and increase summer water temperatures (Poff *et al.* 2002, p. 11; Koopman *et al.* 2009, p. 3; PRBO Conservation Science 2011, p. 15). Lower flows as a result of smaller snowpack could reduce sucker habitat, which might adversely affect Modoc sucker reproduction and survival. Warmer water temperatures could lead to physiological stress and could also benefit nonnative fishes that prey on or compete with Modoc suckers. Increases in the number and size of forest fires could also result from climate change (Westerling *et al.* 2006, p. 940) and could adversely affect watershed function resulting in faster runoff, lower base flows during the summer and fall, and increased sedimentation rates. It is

possible that lower flows may result in increased groundwater withdrawal for agricultural purposes and thus reduced water availability in certain stream reaches occupied by Modoc suckers. While these are all possible scenarios, we have no data on which to predict the likelihood or magnitude of these outcomes.

In summary, droughts may be a concern because they could likely constrict the amount of available habitat and reduce access to spawning habitat. However, the species has not declined in distribution since the time of listing in 1985, even though the region where it exists has experienced several pronounced droughts since listing when total annual precipitation was approximately half of the long-term average (Western Regional Climate Center, *http://www.wrcc.dri.edu/cgi-bin/cliMONtpre.pl?ca0161,* accessed 23 January 2013). And, although we cannot predict future climatic conditions accurately, the persistence of Modoc sucker across its range through the substantial droughts of the last century suggests that the species is resilient to drought and reduced water availability. Because we are unable at this time to predict how climate change will exacerbate the effects of drought within the Modoc sucker's range, we cannot make meaningful projections on how the species may react to climate change or how its habitat may be affected. Therefore, based on the best available information, we conclude that droughts and climate change, while likely affecting Modoc sucker populations, do not constitute substantial threats to Modoc sucker now and are not expected to in the future.

Hybridization and Genetic Introgression

The listing rule identified hybridization with the Sacramento sucker as a threat to the Modoc sucker. Hybridization can be cause for concern in a species with restricted distribution, particularly when a closely related, nonnative species is introduced into its range, which can lead to loss of genetic integrity or even extinction (Rhymer and Simberloff 1996, p. 83). At the time of listing, it was assumed that hybridization between Modoc suckers and Sacramento suckers had been prevented in the past by the presence of natural physical barriers, but that the loss of these stream barriers was allowing interaction and hybridization between the two species (see *Elimination of Natural Barriers* above). However, the assumption that extensive hybridization was occurring was based solely on the two species occurring in the same streams, and the identification of a few specimens exhibiting what were thought to be intermediate morphological characters. At the time of listing in 1985, genetic and complete morphological information to assess this assumption was not available.

The morphological evidence for hybridization in the listing rule was based on a limited understanding of morphological variation in Modoc suckers and Sacramento suckers, derived from the small number of specimens available at that time. The actual number of specimens identified as apparent hybrids by earlier authors was very small, and many of these specimens came from streams without established Modoc sucker populations. Subsequent evaluation of variability in the two species was based on a larger number of specimens. It showed that the overlapping characteristics (primarily lateral line and dorsal ray counts) that had been interpreted by earlier authors as evidence of hybridization, are actually part of the natural meristic (involving counts of body parts such as fins and scales) range for the two species. As a result, this variability is no longer thought to be the result of genetic introgression between the two species (Kettratad 2001, pp. 52–53).

We initiated a study in 1999 to examine the genetics of suckers in the Pit River basin and determine the extent and role of hybridization between the Modoc and Sacramento suckers using both nuclear and mitochondrial genes (Palmerston *et al.* 2001, p. 2; Wagman and Markle 2000, p. 2; Dowling 2005, p. 3; Topinka 2006, p. 50). The two species are genetically similar, suggesting that they are relatively recently differentiated or have a history of introgression throughout their range that has obscured their differences (Dowling 2005, p. 9; Topinka 2006, p. 65). Although the available evidence cannot differentiate between the two hypotheses, the genetic similarity in all three sub-basins, including those populations shown to be free of introgression based on species-specific genetic markers (Topinka 2006, pp. 64–65), suggests that introgression has occurred on a broad temporal and geographic scale and is not a localized or recent phenomenon. Consequently, the genetic data suggest that introgression is natural and is not caused or measurably affected by human activities.

In a later study, Topinka (2006, p. 50) analyzed nuclear DNA from each of the two species and identified species-specific markers indicating low levels of introgression by Sacramento sucker alleles into most Modoc sucker populations. However, there was no evidence of first generation hybrids, and it is not clear whether introgression occurred due to local hybridization or through immigration by individual Modoc suckers carrying Sacramento alleles from other areas where hybridization had occurred.

Scientists who have studied suckers in western North America consider that, throughout their evolutionary history, hybridization among sympatric native fishes is not unusual and may provide an adaptive advantage (Dowling and Secor 1997, pp. 612–613; Dowling 2005, p. 10; Topinka 2006, p. 73; Tranah and May 2006, p. 313). Further, despite any hybridization that has occurred in the past, the Modoc sucker maintains its morphological and ecological distinctiveness, even in populations showing low levels of introgression, and is clearly distinguishable in its morphological characteristics from the Sacramento sucker (Kettratad 2001, p. 3). The low levels of observed introgression by Sacramento suckers in streams dominated by Modoc suckers, even when there are no physical barriers between the two species, suggests that either ecological differences, selective pressures, or other natural reproductive-isolating mechanisms are sufficient to maintain the integrity of the species, even after more than a century of habitat alteration by human activities. Therefore, given the levels of observed introgression in streams dominated by Modoc suckers, the lack of evidence of first-generation hybrids, the fact that Modoc suckers and Sacramento suckers are naturally sympatric, and the continued ecological and morphological integrity of Modoc sucker populations, we conclude that hybridization and genetic introgression do not constitute threats to the Modoc sucker now and are not expected to in the future.

Overall Summary of Factors Affecting Modoc Sucker

Threats to the Modoc sucker that were considered in the 1985 listing rule have been reduced or ameliorated or are no longer considered to have been actual threats at the time of listing. Further, climate change and drought are not considered substantial threats. Habitat conditions on both public and private lands have benefited since the time of listing as a result of improved livestock grazing management practices and construction of fencing to exclude cattle from riparian areas on several of the streams occupied by Modoc suckers. We expect habitat conditions to remain stable or improve. Although recent habitat surveys indicate erosion continues to be a problem along lower Turner Creek and in Dutch Flat Creek,

these areas represent 4.1 percent (1.76 mi/42.5 mi) of Modoc sucker's total occupied habitat. Habitat threats are addressed through multiple Federal and State regulations, including NFMA, California and Oregon State water regulations, and California Fish and Game Code. Therefore, these impacts are not considered a substantial threat to the species.

Modoc suckers have coexisted with brown trout for more than 70 years, and the overlap in distribution of largemouth bass and Modoc suckers is limited because bass are warm water fish that occur in lower-elevation reaches downstream of many of the reaches occupied by Modoc sucker, and reservoir outflows have been screened to reduce the risk of bass being flushed into streams occupied by Modoc sucker. Further, State regulations in both California and Oregon prohibit transfer of fish from one water body to another. Thus, introduced predators are not a significant risk to Modoc sucker populations. A greater understanding of the genetic relationships and natural gene flow between the Modoc suckers and Sacramento suckers has reduced concerns over hybridization between the two naturally sympatric species.

Although none of the factors discussed above is having a major impact on Modoc sucker, a combination of factors could potentially have a much greater effect. For example, effects of erosion on habitat resulting from poor livestock grazing management practices could worsen during periods of prolonged, severe drought when some water sources may dry up, resulting in greater pressure on the remaining available water sources, which would likely degrade Modoc sucker habitat. However, the impacts of livestock grazing on Modoc sucker habitat has been greatly reduced or eliminated by improved grazing management practices and management plans, which are not expected to change. Although the types, magnitude, or extent of cumulative impacts are difficult to predict, we are not aware of any combination of factors that has not already or would not be addressed through ongoing conservation measures. Based on this assessment of factors potentially impacting the species, we consider Modoc sucker to have no substantial threats now or in the future (see Summary of Factors Affecting the Species section of the Species Report (Service 2013, pp. 23–57).

Finding

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of 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. As required by section 4(a)(1) of the Act, we conducted a review of the status of this species and assessed the five factors to evaluate whether Modoc sucker is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2011 petition, information available in our files and gathered through our 90-day finding in response to this petition, and other available published and unpublished information. We also consulted with species experts and land management staff with the USFS, CDFW, and ODFW, who are actively managing for the conservation of Modoc sucker.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This determination does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered species or threatened species under the Act.

Significant impacts at the time of listing that could have resulted in the extirpation of all or parts of populations have been eliminated or reduced since listing. We conclude that the previously recognized impacts to Modoc sucker from the present or threatened destruction, modification, or curtailment of its habitat or range (specifically, erosion due to poor cattle grazing management) (Factor A); elimination of natural barriers (Factor A); predation by nonnative species (Factor C); and hybridization or genetic introgression (specifically, from Sacramento sucker) (Factor E) do not rise to a level of significance, such that the species is in danger of extinction now or in the foreseeable future.

As a result of the discovery of five populations not known at the time of listing and the documentation of the genetic integrity of populations considered in the 1985 listing rule to have been lost due to hybridization, the known range of the Modoc sucker has increased and it currently occupies its entire known historical range. Additionally, the distribution of occupied stream habitat for populations known at the time of listing has remained stable or expanded slightly since the time of listing, even though the region has experienced several droughts during this time period. Additionally, the relevant recovery objectives outlined in the Recovery Plan for the Modoc sucker have been met, indicating sustainable populations exist throughout the species' range. Finally, an assessment of factors that may be impacting the species did not reveal any significant threats to the species, now or in the future. We have carefully assessed the best scientific and commercial data available and determined that Modoc sucker is no longer in danger of extinction throughout all of its range, nor is it likely to become so in the future.

Significant Portion of the Range

Having examined the status of Modoc sucker throughout all its range, we next examine whether the species is in danger of extinction in a significant portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address

the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

We consider the ''range'' of Modoc sucker to include an estimated 42.5 miles (68.4 kilometers) of occupied habitat in 12 streams in the Turner Creek, Ash Creek, and Goose Lake sub-basins of the Pit River. This amount has improved greatly since the time of listing, when its known distribution was limited to an estimated 12.9 miles (20.8 kilometers) of occupied habitat in seven streams in the Turner Creek and Ash Creek sub-basins. This distribution represents its entire known historical range, with the exception of Willow Creek within the Ash Creek sub-basin. Previous reports of Modoc suckers in Willow Creek are based on limited and unverifiable reports (Reid 2009, p. 14), and their present existence in Willow Creek remains questionable (Reid 2008a, p. 25). Therefore, we consider the confirmed historical range to be occupied.

We considered whether any portions of the Modoc sucker range might be both significant and in danger of extinction or likely to become so in the foreseeable future. One way to identify portions would be to identify natural divisions within the range that might be of biological or conservation importance. Modoc sucker inhabit three sub-basins of the Pit River, one of which, the Goose Lake sub-basin, is disjoined from the other two sub-basins (Turner Creek and Ash Creek sub-basins). These sub-basins have the potential to be significant areas to the species due to potential geographic isolation. Although the sub-basins have the potential to be significant, the populations of the species within the sub-basins are not in danger of extinction or likely to become so within the foreseeable future due to lack of significant threats. Another way to identify portions would be to consider whether any threats are geographically concentrated in some way that would indicate the species could be threatened or endangered in that area. As noted above, erosion due to poor grazing management still occurs within approximately 4.1 percent of the Modoc sucker range, and has the potential to adversely affect Modoc sucker in those areas. These two sites are within different sub-basins and, both collectively and per sub-basin, represent a very small fraction of the Modoc sucker's range. These areas, individually or collectively, are therefore unlikely to constitute a significant portion of the species' range. No other natural divisions occur, and no other potential remaining threats have been identified. Therefore, it is our conclusion, based on our evaluation of the current and potential threats to Modoc sucker, that these threats are neither sufficiently concentrated nor of sufficient magnitude to indicate the species is in danger of extinction or likely to become so in the foreseeable future in any of the areas that support the species, and thus, it is likely to persist throughout its historical range.

We have carefully assessed the best scientific and commercial data available and determined that the Modoc sucker is no longer in danger of extinction throughout all or significant portions of its range, nor is it likely to become so in the future. As a consequence of this determination, we are proposing to remove this species from the list of endangered and threatened species under the Act.

Effects of This Rule

If this proposed rule is made final, it would revise 50 CFR 17.11(h) to remove the Modoc sucker from the List of Endangered and Threatened Wildlife and would revise 50 CFR 17.95(e) to remove designated critical habitat for the species. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Modoc sucker.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (50 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule and the draft post-delisting monitoring (PDM) plan. A thorough review of information that we relied on in preparing this proposed rule—including information on taxonomy, life-history, ecology, population distribution and abundance, and potential threats—is presented in the Modoc Sucker Species Report (Service 2013) available at *www.regulations.gov* (Docket Number FWS–R8–ES–2013–0133). The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. A peer review panel will conduct an assessment of the proposed rule, and the specific assumptions and conclusions regarding the proposed delisting. This assessment will be completed during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The PDM is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Plan Overview

The Service has developed a draft PDM plan for the Modoc sucker. The PDM plan is designed to verify that Modoc sucker remains secure from risk of extinction after removal from the Federal List of Endangered and Threatened Wildlife by detecting

changes in its status and habitat throughout its known range.

Although the Act has a minimum PDM requirement of 5 years, we will monitor Modoc sucker for a 10-year monitoring period to account for environmental variability (for example, drought) that may affect the condition of habitat and to provide for a sufficient number of surveys to document any changes in the abundance of the species. Based on the life history of Modoc suckers, in which individuals mature at age 2+ years, a complete survey of previously surveyed areas should be conducted every 2 years within the 10-year monitoring period. This will allow us to assess changes in abundance or the extent of the species' range over time; changes in the level of recruitment of reproducing fish into the population; and any potential changes in threats to the species. However, if a decline in abundance is observed or a substantial new threat arises, post-delisting monitoring may be extended or modified as described below.

A multi-state occupancy approach (MacKenzie et al. 2009, entire) will be used to estimate the proportion of sites occupied, change in site occupancy, and change in abundance of Modoc suckers. Surveys for Modoc suckers will be completed following a modified version of a sampling protocol developed for Modoc sucker (Reid 2008b) that is consistent with the approach used in surveys conducted since 2008. This approach will allow for monitoring population status over time as it permits the estimation of the proportion of sites (within a stream and among all streams) that are occupied and that are in each state of abundance (low and high). During occupancy and abundance surveys, we will also monitor threats and recruitment. To measure recruitment, we will estimate the size of individuals to the nearest centimeter. Examination of fish sizes will allow a determination to be made if recruitment is occurring over time. Ideally, surveys will result in diverse size classes of fish, indicating recruitment is occurring. Threats, both biotic (for example, nonnative predatory fish) and abiotic (for example, excessive sedimentation) will also be assessed during surveys (both day and night). Prior to completing surveys, sites (pools) within streams will be landmarked and georeferenced to allow relocation for subsequent surveys.

After each complete survey (conducted once every 2 years), the Service and its partners will compare the results with those from previous surveys and consider the implication of any observed reductions in abundance or threats to the species. Within 1 year of the end of the PDM period, the Service will conduct a final internal review and prepare (or contract with an outside entity) a final report summarizing the results of monitoring. This report will include: (1) A summary of the results from the surveys of Modoc sucker occupancy, states of abundance, recruitment, and change in distribution; and (2) recommendations for any actions and plans for the future. The final report will include a discussion of whether monitoring should continue beyond the 10-year period for any reason.

With this notice, we are soliciting public comments and peer review on the draft PDM Plan including its objectives and procedures (see Public Comments Solicited). All comments on the draft PDM plan from the public and peer reviewers will be considered and incorporated into the final PDM plan as appropriate. The draft PDM plan will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*) and the Klamath Falls Fish and Wildlife Office Web page (*http://fws.gov/klamathfallsfwo*) and on the Federal eRulemaking Portal at *http://www.regulations.gov.* We anticipate finalizing this plan, considering all public and peer review comments, prior to making a final determination on the proposed delisting rule.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0133 or upon request from the Field Supervisor, Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is the Pacific Southwest Regional Office in Sacramento, California, in coordination with the Klamath Falls Fish and Wildlife Office in Klamath Falls, Oregon (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Sucker, Modoc'' under ''Fishes'' in the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

■ 3. Amend § 17.95(e) by removing the entry for ''Modoc Sucker *(Catostomus microps)''.*

Dated: December 30, 2013.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2014–01526 Filed 2–12–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0080; 4500030114]

RIN 1018–AZ57

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Ivesia webberi (Webber's Ivesia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our August 2, 2013, proposed rule to designate critical habitat for *Ivesia webberi* (Webber's ivesia). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for *I. webberi* and an amended required determinations section of the proposal. In addition, in this document, we are proposing revised unit boundaries and acreages for five units described in our August 2, 2013, proposal (78 FR 46862) based on comments we received on the proposal. These revisions result in an increase of approximately 159 acres (65 hectares) in the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the amended required determinations section, and the unit revisions described in this document. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before March 17, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the associated documents of the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0080 or by mail from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2013–0080 (the docket number for the proposed critical habitat rule).

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2013–0080); Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; by telephone 775–861–6300; or by facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for *Ivesia webberi* that was published in the **Federal Register** on August 2, 2013 (78 FR 46862), our DEA of the proposed designation, the amended required determinations provided in this document, and the revisions to five of the proposed units as described in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree those threats can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of *Ivesia webberi* habitat;

(b) The areas that are currently occupied and contain features essential to the conservation of the species that we should include in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) The areas not occupied at the time of listing that are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on the benefits of including or excluding areas that exhibit these impacts.

(5) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(6) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(7) Whether any areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (78 FR 46862) during the initial comment period from August 2, 2013, to October 1, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. Accordingly, the final decision may differ from the proposed rule, as revised by this document.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing, proposed critical habitat, and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket Number FWS–R8–ES–2013–0080, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule to designate critical habitat and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2013–0080, or by mail from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for *Ivesia webberi* (78 FR 46862) in this document. For more information on previous Federal actions concerning the *I. webberi,* refer to the proposed listing rule (78 FR 46889) that published in the **Federal Register** on August 2, 2013. Both proposed rules are available online at *http://www.regulations.gov* (at Docket No. FWS–R8–ES–2013–0079 for the proposed listing and Docket No. FWS–R8–ES–2013–0080 for the proposed critical habitat designation) or from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On August 2, 2013, we published a proposed rule to designate critical habitat for *Ivesia webberi* (78 FR 46862). We proposed to designate approximately 2,011 acres (ac) (814 hectares (ha)) as critical habitat for *I. webberi* in Plumas, Lassen, and Sierra Counties in northeastern California and in Washoe and Douglas Counties in northwestern Nevada. That proposal had an initial 60-day comment period ending October 1, 2013. This document announces a proposed revision of the boundaries and acreages of five units (Units 9, 10, 12, 13, and 14) described in the August 2, 2013, proposed rule to designate critical habitat. We anticipate submitting for publication in the **Federal Register** a final critical habitat designation for *I. webberi* on or before August 2014, if we finalize our proposed rule to list the species under the Act.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Revisions to Proposed Critical Habitat Designation

On August 2, 2013, we proposed as critical habitat for *Ivesia webberi* 16 units (2 with subunits), consisting of approximately 2,011 ac (814 ha) in Plumas, Lassen, and Sierra Counties in northeastern California and in Washoe and Douglas Counties in northwestern Nevada (78 FR 46862).

We are now proposing to increase the designation by approximately 159 ac (65 ha) to a total of approximately 2,170 ac (879 ha). We propose this increase based on new information received from the U.S. Forest Service (Forest Service) that better defines the physical and biological features along the boundaries of these five proposed units, resulting in changes to the acreages for those units. The revised units include: Unit 9 (Stateline Road 1), Unit 10 (Stateline Road 2), Unit 12 (Black Springs), Unit 13 (Raleigh Heights), and Unit 14 (Dutch Louie Flat) (see Table 1). Apart from the acreages and ownership percentages provided in the unit descriptions in the August 2, 2013, proposed rule, the information in the unit descriptions in that proposal remains unchanged.

TABLE 1—REVISIONS TO PROPOSED CRITICAL HABITAT UNITS FOR IVESIA WEBBERI

[Area estimates reflect all land within critical habitat boundaries]

Proposed critical habitat unit	Land ownership by type	Revised acres (hectares)	Change from 8/2/2013 proposal (acres (hectares))
9. Stateline Road 1	Federal	186 (75)	+61 (+25)
	State or Local Government	0 (0)	0 (0)
	Private	7 (3)	0 (0)
10. Stateline Road 2	Federal	66 (27)	+1 (+1)
	State or Local Government	0 (0)	0 (0)
	Private	0 (0)	0 (0)
12. Black Springs	Federal	133 (54)	+17 (+7)
	State or Local Government	0 (0)	0 (0)
	Private	30 (12)	+6 (+2)
13. Raleigh Heights	Federal	229 (93)	+66 (+27)
	State or Local Government	0 (0)	0 (0)
	Private	24 (10)	+10 (+4)
14. Dutch Louie Flat	Federal	13 (5)	+2 (+1)
	State or Local Government	0 (0)	0 (0)
	Private	41 (17)	−5 (−2)

TABLE 1—REVISIONS TO PROPOSED CRITICAL HABITAT UNITS FOR IVESIA WEBBERI—Continued

[Area estimates reflect all land within critical habitat boundaries]

Proposed critical habitat unit	Land ownership by type	Revised acres (hectares)	Change from 8/2/2013 proposal (acres (hectares))
Totals for Critical Habitat Units 9, 10, 12, 13, and 14.	Federal	627 (254)	+148 (+61)
	State or Local Government	0 (0)	0 (0)
	Private	102 (42)	+11 (+4)
Revised Totals for All 16 Units	Federal	1,513 (612)	
	State or Local Government	214 (86)	
	Private	444 (180)	
	TOTAL	2,170 (879)	

Note: Area sizes may not sum due to rounding.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; and the implementation of a management plan. In the case of *Ivesia webberi,* the benefits of critical habitat include public awareness of the presence of the species, the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *I. webberi.* In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies. We have not proposed to exclude any areas from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat (Service 2013). The information contained in our IEM was then used to develop a screening analysis (Industrial Economics, Incorporated (IEc) 2013, 2014) of the probable effects of the designation of critical habitat for *Ivesia webberi.* We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are,

therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis (IEc 2013, 2014) combined with the information contained in our IEM (Service 2013) are what we consider our DEA of the proposed critical habitat designation for *I. webberi,* and the DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O.s' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for *Ivesia webberi,* first we identified, in the IEM dated October 31, 2013, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (Forest Service and U.S. Bureau of Land Management (BLM)); (2) commercial or residential development; (3) livestock grazing; (4) off-highway vehicle (OHV) and other recreational activities; (5) wildfire; (6) vegetation management, including fuels reduction activities and management for invasive species; and (7) vegetation or ground-disturbing activities associated with construction, maintenance or use of roads, trails, transmission lines, or other infrastructure corridors (Service 2013, pp. 3–10). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement.

Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where *Ivesia webberi* is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for *Ivesia webberi*'s critical habitat (Service 2013, pp. 12–22). Because the designation of critical habitat for *I. webberi* was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would constitute jeopardy to *I. webberi* would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species (Service 2013, pp. 12–22). This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for *Ivesia webberi* (as proposed on August 2, 2013 (78 FR 46862)) totals approximately 2,011 ac (814 ha), all of which are considered occupied by the species. Of the 2,011 ac (814 ha), approximately 68 percent of the total proposed designation is located on Federal lands, 11 percent on State land, and 21 percent on private lands. Additionally, 53 percent (or 1,072 ac (434 ha) of the 2,011 ac (814 ha)) are actively managed for *I. webberi* conservation through the Forest Service's *Conservation Assessment and Strategy for Ivesia Webberi* (Bergstrom 2009, entire). In this notice we are proposing revised unit boundaries and acreages for five units described in our August 2, 2013, proposal (78 FR 46862) based on comments we received on the proposal. These revisions, which were not available at the time the DEA was developed, result in an increase of approximately 159 ac (65 ha) in the proposed designation of critical habitat (see Table 1 above). After considering the economic impacts for the proposed areas and assessing the minimal changes to the boundaries of the proposed areas, we expect that economic impacts will not increase substantially. These changes will be fully analyzed and reported in the final economic analysis. As discussed above, the following economic activities are identified as having the potential to impact proposed critical habitat (as well as the additional 159 ac (65 ha) that we are proposing for the revised unit boundaries): Federal lands management (Forest Service and BLM); commercial or residential development; livestock grazing, off-highway vehicle use, and other recreational activities; wildfire; vegetation management, including fuels reduction activities and management for invasive species; and vegetation or ground-disturbing activities associated with construction, maintenance or use of roads, trails, transmission lines, or other infrastructure corridors.

Our DEA determined that the section 7-related costs of designating critical habitat for *Ivesia webberi* are likely to be limited to the additional administrative effort required to consider adverse modification in a small number of consultations. This finding is based on:

(1) All proposed units are considered occupied, providing baseline protection resulting from the listing of the species as threatened under the Act.

(2) Activities occurring within designated critical habitat with a potential to affect the species' habitat are also likely to adversely affect the species, either directly or indirectly.

(3) Project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy in occupied habitat.

(4) Federal agencies operating in proposed critical habitat areas are already aware of the presence of *Ivesia webberi* and also are experienced consulting with us under section 7 of the Act on other federally listed species. Thus, in the baseline, they are likely to consult even in buffer areas surrounding the species included in the designation to ensure protection of pollinator habitat.

The incremental administrative burden resulting from the designation is unlikely to reach $100 million in a given year based on the small number of anticipated consultations (i.e., less than two consultations per year) and per-consultation costs. Furthermore, it

is unlikely that the designation of critical habitat will trigger additional requirements under State or local regulations. Costs resulting from public perception of the effect of critical habitat, if they occur, are unlikely to reach $100 million in a given year, based on the small number of acres possibly affected and average land values in the vicinity of those acres.

The results of our analysis also suggest approximately 114 ac (46 ha) of private, vacant land is available for future development in the proposed critical habitat area (specifically, the Reno/Sparks metropolitan area in Washoe County); however, we note that after our analysis was completed and based on comments during the first open comment period, our revised proposed critical habitat has resulted in a total of approximately 138 ac (55 ha) of private, vacant land that may be available for future development. If public perception causes the value of critical habitat acres to be diminished, these acres are those most likely to be affected. Due to existing data limitations regarding the probability that such effects will occur, and the likely degree to which property values will be affected, we are unable to estimate the magnitude of perception-related costs that could result from the designation if finalized. However, the cost cannot exceed the total value of affected properties. Based on our analysis, the value of potentially affected parcels is unlikely to exceed $100 million.

Additional information and discussion regarding our economic analysis is available in our DEA available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0080.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our August 2, 2013, proposed rule (78 FR 46862), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for *Ivesia webberi,* we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for *I. webberi,* we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business

entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Ivesia webberi* in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for *I webberi.* Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for *I. webberi* does not pose significant takings implications for lands within or affected by the designation.

Authors

The primary authors of this notice are the staff members of the Pacific Southwest Regional Office (Region 8), with assistance from staff of the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on August 2, 2013, at 78 FR 46862, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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 § 17.96(a) by revising paragraphs (5), (10), (12), and (13) in the entry proposed for ''Family Rosaceae: *ivesia webberi* (Webber's ivesia)'' at 78 FR 46862, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

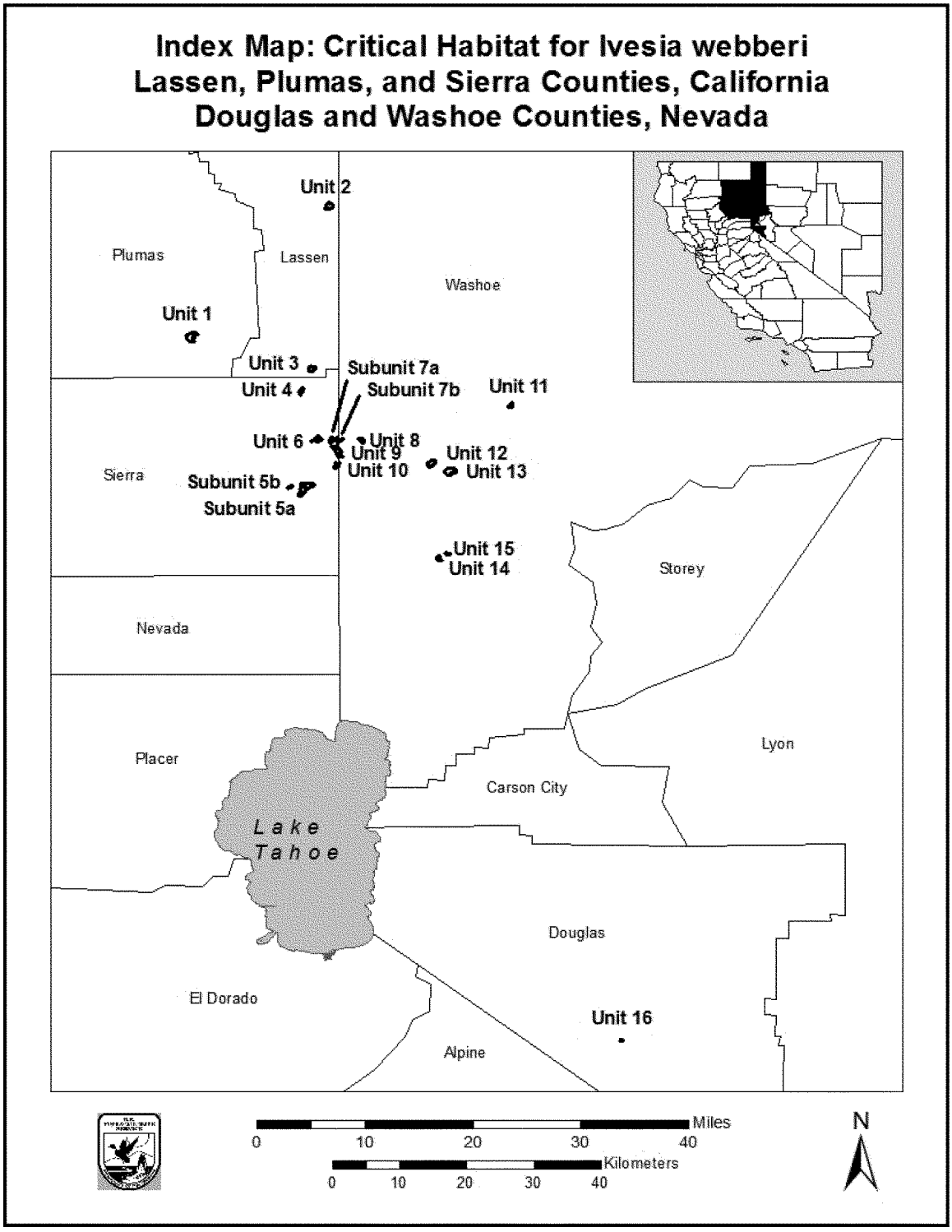
* * * * *

Family Rosaceae: *Ivesia webberi* (Webber's ivesia)

* * * * *

(5) Index map follows:

BILLING CODE P

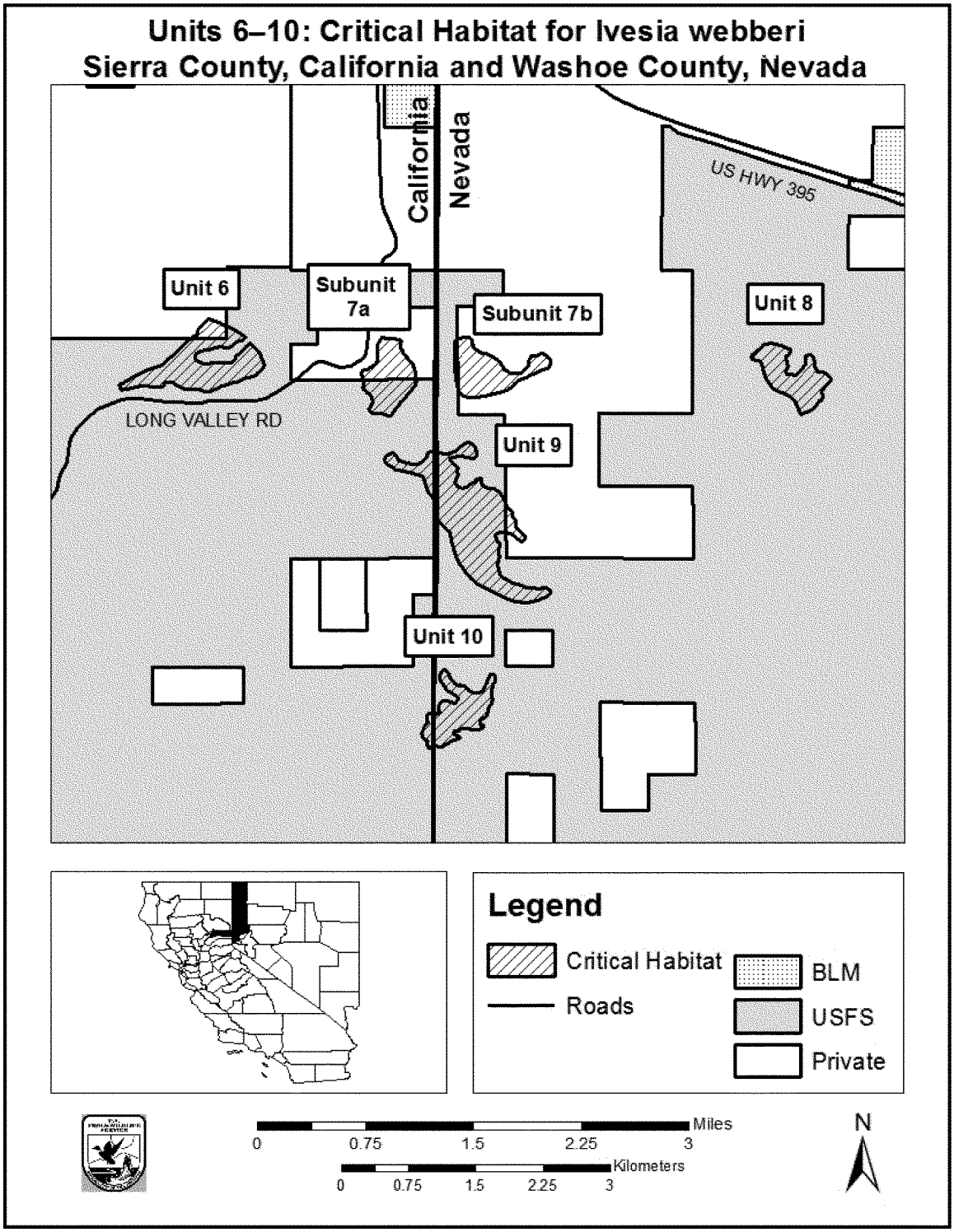


* * * * *

(10) Unit 6, White Lake Overlook, Sierra County, California; Unit 7, Subunit 7a, Mules Ear Flat, Sierra County, California; Unit 7, Subunit 7b, Three Pine Flat and Jeffery Pine Saddle, Washoe County, Nevada; Unit 8, Ivesia Flat, Washoe County, Nevada; Unit 9, Stateline Road 1, Washoe County, Nevada; and Unit 10, Stateline Road 2, Washoe County, Nevada: Critical habitat for *Ivesia webberi,* Sierra County, California, and Washoe County, Nevada.

(i) Unit 6 includes 109 ac (44 ha), Subunit 7a includes 65 ac (27 ha), Subunit 7b includes 68 ac (27 ha), Unit 8 includes 62 ac (25 ha), Unit 9 includes 193 ac (78 ha), and Unit 10 includes 66 ac (27 ha).

(ii) Map of Units 6 through 10 follows:

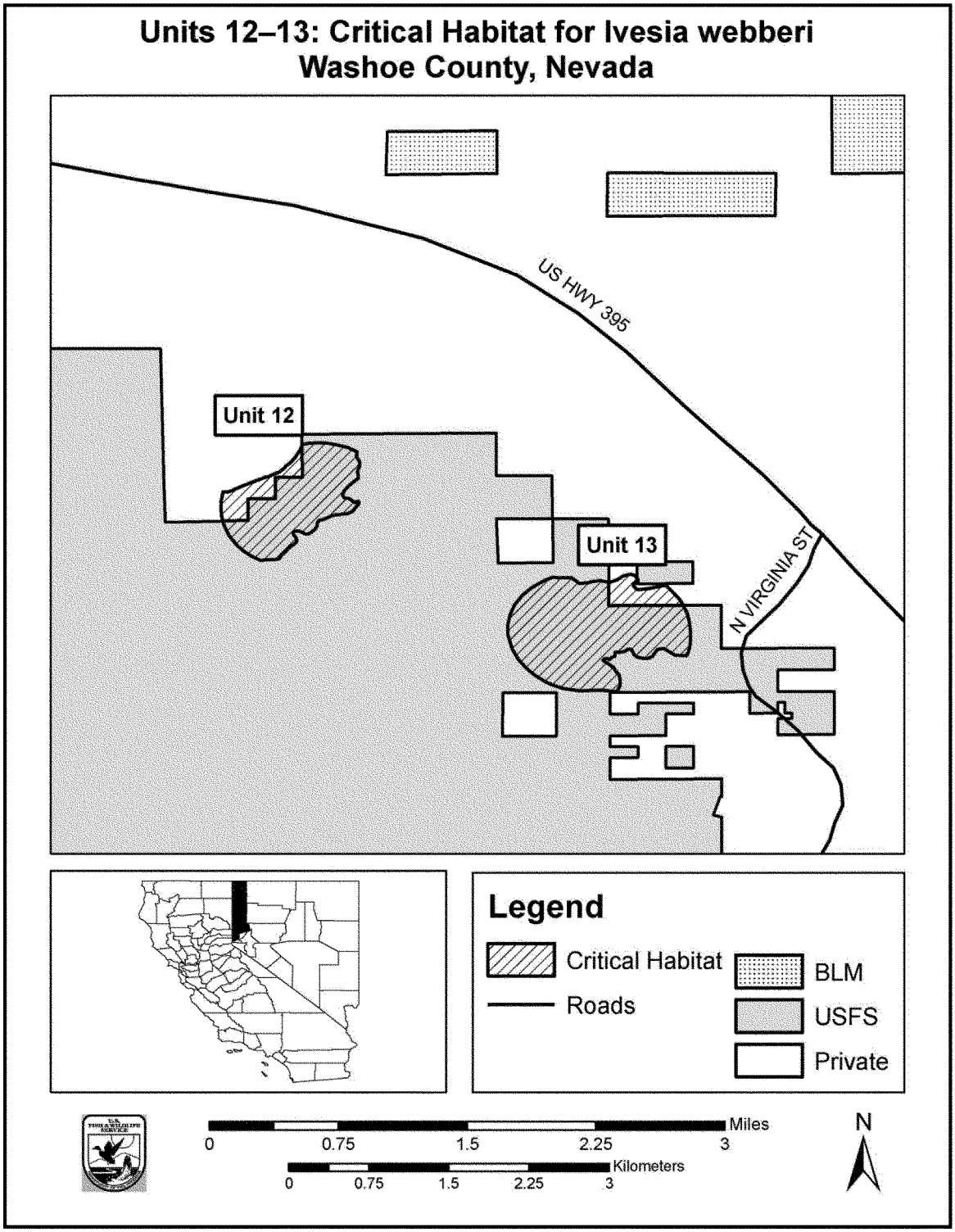


* * * * *

(12) Unit 12, Black Springs and Unit 13, Raleigh Heights: Critical habitat for *Ivesia webberi,* Washoe County, Nevada.

(i) Unit 12 includes 163 ac (66 ha), and Unit 13 includes 253 ac (103 ha).

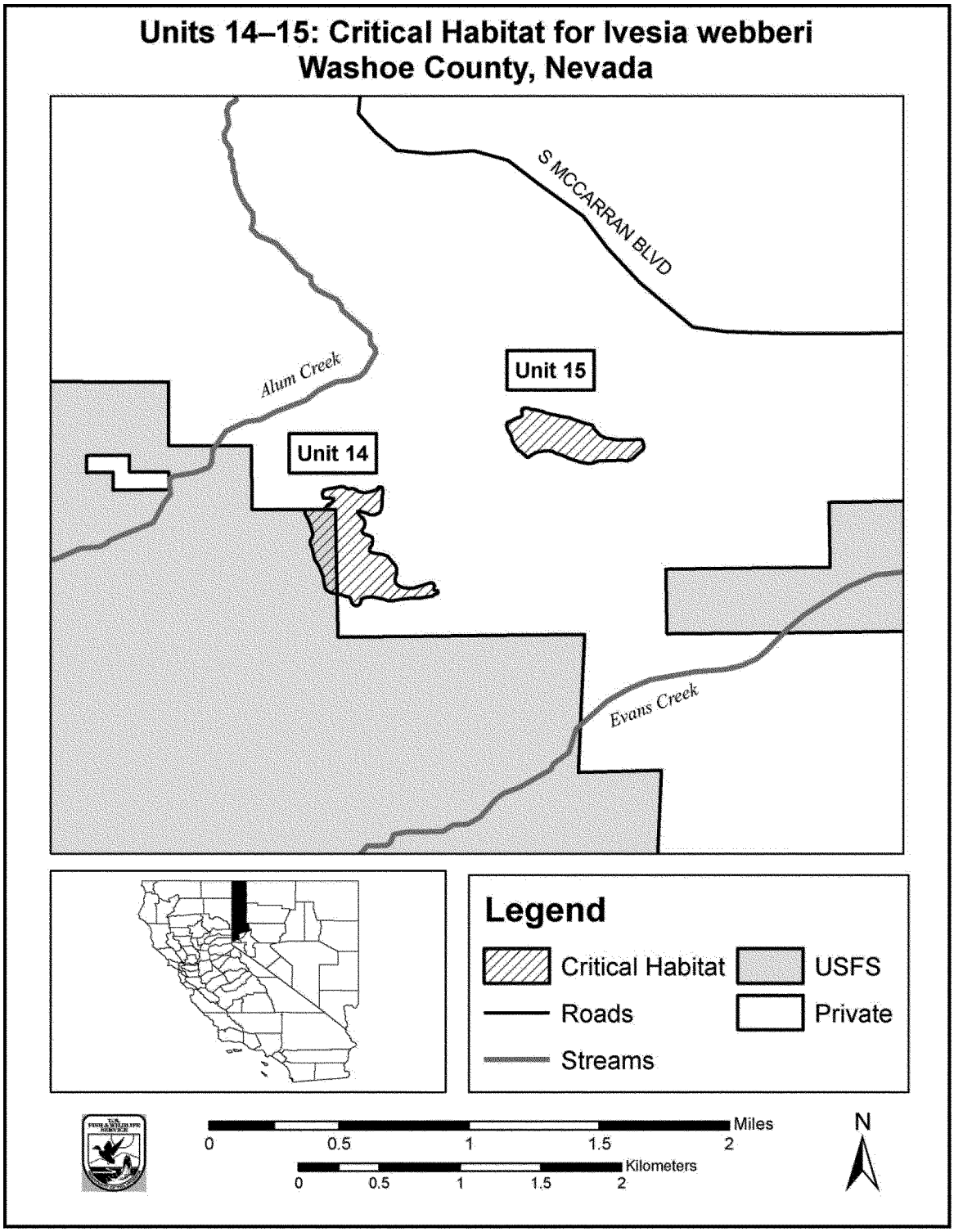
(ii) Map of Units 12 and 13 follows:



(13) Unit 14, Dutch Louie Flat and Unit 15, The Pines Powerline: Critical habitat for *Ivesia webberi,* Washoe County, Nevada.

(i) Unit 14 includes 54 ac (22 ha), and Unit 15 includes 32 ac (13 ha).

(ii) Map of Units 14 and 15 follows:



* * * * *

Dated: February 5, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–03120 Filed 2–12–14; 8:45 am]

BILLING CODE C

Notices

Federal Register

Vol. 79, No. 30

Thursday, February 13, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 10, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR Part 1777, Section 306C Water & Waste Disposal (WWD) Loans & Grants.

OMB Control Number: 0572–0109.

Summary of Collection: Rural Utilities Service is authorized to make loans and grants under Section 306C of the Consolidated Farm and Rural Development Act (7.U.S.C. 1926c).

This program funds facilities and projects in low income rural communities whose residents face significant health risks. These communities do not have access to or are not served by adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities.

Need and Use of the Information: Eligible applicants submit an application package and other information to Rural Development field offices to develop or improve community water and waste disposal systems. In one percent of the cases an applicant will use the funds to enable individuals to connect to the applicant's system or improve residences to use the water or waste disposal system. In this situation, an applicant will make loans and grants to individuals and the applicant will submit an implementation plan, memorandum of agreement and use of funds report.

Description of Respondents: Not-for-profit institutions; individuals or households.

Number of Respondents: 1.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 9.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–03157 Filed 2–12–14; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Recreational Fishing Expenditure Survey.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 32,958.

Average Hours per Response: Trip expenditures intercept survey, 5 minutes; mail trip expenditure survey, 8 minutes; mail durable goods survey, 15 minutes; Highly Migratory Species durable goods and trip expenditure survey, 20 minutes.

Burden Hours: 3,804.

Needs and Uses: This request is for a new collection of information.

The objective of the survey is to collect information on both trip expenditures and annual durable goods expenditures made by marine recreational anglers. The survey will be conducted in two parts. The first part of the survey, planned for 2014, will ask anglers about their purchases of durable goods such as fishing gear, boats, vehicles, and second homes. The second part, planned for 2016, will ask anglers about the expenses incurred on their most recent marine recreational fishing trip. As specified in the Magnuson-Stevenson Fishery Conservation and Management Act of 1996 (and reauthorized in 2007), NMFS is required to enumerate the economic impacts of the policies it implements on fishing participants and coastal communities. The expenditure data collected in this survey will be used to estimate the economic contributions and impacts of marine recreational fishing to each coastal state and nationwide.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: February 10, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–03136 Filed 2–12–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Cost-Earnings Survey of Hawaii and American Samoa Small Boat-Based Fisheries.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 1,013.

Average Hours per Response: 30 minutes.

Burden Hours: 507.

Needs and Uses: This request is for a new information collection.

The National Marine Fisheries Service (NMFS) proposes to collect information about fishing expenses and catch distribution (such as for sale, home consumption, and give-away, etc.) in the Hawaii and American Samoa small boat-based reef fish, bottomfish, and pelagics fisheries with which to conduct economic analyses that will improve fishery management in those fisheries; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS Strategic Operating Plans.

Respondents will include small boat fishers in Hawaii and American Samoa and their participation in the economic data collection will be voluntary. These data will be used to assess how fishermen will be impacted by and respond to regulations likely to be considered by fishery managers.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov.

Dated: February 10, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–03135 Filed 2–12–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–46–2013]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Authorization of Production Activity; Janssen Ortho, LLC; Subzone 61N (Pharmaceutical Products); Gurabo, Puerto Rico

On April 29, 2013, the Puerto Rico Trade and Export Company, grantee of FTZ 61, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Janssen Ortho, LLC, within Subzone 61N, in Gurabo, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 30270, 05–22–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: February 7, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–03216 Filed 2–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–11–2014]

Foreign-Trade Zone 87—Lake Charles, Louisiana, Notification of Proposed Production Activity, LEEVAC Shipyards, LLC (Shipbuilding), Lake Charles and Jennings, Louisiana

The Lake Charles Harbor and Terminal District, grantee of FTZ 87, submitted a notification of proposed production activity on behalf of LEEVAC Shipyards, LLC (LEEVAC), located in Lake Charles and Jennings, Louisiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 27, 2014.

The LEEVAC facilities are located at 111 Bunge Street, Jennings (Jefferson Davis Parish), Louisiana, and within Site 2 of FTZ 87 at 8200 Big Lake Road, Lake Charles (Calcasieu Parish), Louisiana. A separate application for subzone status at LEEVAC's Jennings shipyard was submitted and will be processed under Section 400.31 of the FTZ Board's regulations. The facilities are used for the construction and repair of oceangoing vessels. Pursuant to 15 CFR Section 400.14(b) of the regulations, FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt LEEVAC from customs duty payments on foreign status components used in export production. On its domestic sales, LEEVAC would be able to choose the duty rate during customs entry procedures that applies to oceangoing vessels (free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Coatings/resins; fittings; flanges; boxes/crates; handles; knobs; floor coverings; plaster tiles; life jackets; insulation; tableware; metal pipe fittings/flanges/elbows/

sleeves; anchors; steel wire; copper fittings/fasteners; nickel fittings; aluminum rods/profiles/fittings/ladders/hangers/forgings; lead pipes/fittings; zinc and tin tubes/pipes/fittings; base metal fittings; flexible tubing; boilers; steam and gas turbines and related parts; marine/diesel engines and related parts; hydrojet engines; turbine jets; fuel/cooling/ballast/macerator/hydraulic/bilge/sump/hydraulic/jet pumps and related parts; air/liquid compressors; turbochargers; winches; refrigeration/cooling equipment; heat exchangers; liquid purifiers; air/fuel filters; sprayers; derricks; deck machinery; evaporative air coolers; trash compactors; pressure/scupper/check/relief/gate/valves; roller bearings; transmissions and parts thereof (*e.g.,* z-drives, shafts, gearboxes, clutches); pulleys; flywheels; acoustic baffles; propellers and blades; electric ballasts/motors/generators; generator sets; generator parts; transformers and related parts; starters; heaters and related parts; radio/TV/radar equipment; antennas; tuners; parts of signaling devices; electrical components and panels; switches/switching equipment; connectors; wiring harnesses; lamps; signal generators; displays; cables; mirrors; sonar apparatus; optical instruments; depth sounding equipment; micrometers and calipers; thermostats; chronometers; regulators; controllers; and, search lights (duty rate ranges from free to 6.7%; 17¢ each +2.5%, 1¢/jewel). The production activity under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign origin steel mill products (*e.g.,* angles, pipe, plate), which requires that LEEVAC must pay all applicable duties on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is March 25, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: February 6, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–03212 Filed 2–12–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; A Social Network Analysis of NOAA's Sentinel Site Program

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 April 14, 2014.

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 Chris Ellis, (843) 740–1195 or *Chris.Ellis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection.

The NOAA Sentinel Site Program (SSP) brings to life NOAA's science, service, and stewardship continuum by leveraging existing resources and integrating multiple parallel efforts to promote resilient coastal communities and ecosystems in the face of change. A primary purpose of the NOAA Sentinel Site Program is to directly engage local, state, and federal managers as part of a Sentinel Site Cooperative (SSC) team. By doing so, managers can help ensure the types of science conducted, information gathered, and products developed are immediately used for better management. With this point in mind, who is actually using the products and services developed by these Cooperatives, and to what degree is capacity being built among and between coastal professionals and organizations through communications generated through the SSCs.

The purpose of this survey is to better understand the frequency and patterns of communication as a result of the efforts of the SSP. To help gather this information, NOAA will survey individuals known to have experience and insight with the SSP and inquire on the communications and collaborations that have resulted. This is intended to serve as a means of formative evaluation for this effort. A formative evaluation is used to assess programs or projects early in their development or implementation to provide information about how best to revise and modify for improvement. This type of evaluation often is helpful for new programs, such as the SSC, but can also be used to monitor the progress of ongoing programs.

II. Method of Collection

The survey will be provided to respondents in electronic format provided via email. Methods of submittal will also be via email of electronic forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 83.

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: February 10, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–03138 Filed 2–12–14; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD128

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Meetings of the South Atlantic Fishery Management Council (SAFMC).

SUMMARY: In addition to a meeting of the Law Enforcement Advisory Panel (AP), the South Atlantic Fishery Management Council (Council) will hold a joint meeting of the Law Enforcement Committee and Law Enforcement AP as well as a joint committee meeting of the Habitat & Environmental Protection Committee and Ecosystem-Based Management Committee. The Council will also hold meetings of the: Southeast Data, Assessment and Review Committee (partially Closed Session); Protected Resources Committee; Snapper Grouper Committee; King & Spanish Mackerel Committee; Executive Finance Committee; Dolphin Wahoo Committee; Data Collection Committee; and a meeting of the Full Council. The Council will take action as necessary. The Council will also hold an informal public question and answer session regarding agenda items and a formal public comment session.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, March 3, 2014 until 1 p.m. on Friday, March 7, 2014.

ADDRESSES:

Meeting Address: The meeting will be held at the Hilton Savannah DeSoto, 15 East Liberty Street, Savannah, GA 31401; telephone: (877) 280–0751 or (912) 232–9000; fax: (912) 232–6018.

Council Address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

Law Enforcement Advisory Panel Agenda, Monday, March 3, 2014, 8:30 a.m. Until 12 Noon

1. Receive an update on the North Carolina Joint Enforcement Agreement.
2. Review the status of the Oculina Experimental Closed Area Evaluation Team.
3. Receive an update on recently completed and developing amendments.
4. Review Snapper Grouper Amendment 33/Dolphin Wahoo Amendment 7 (fillet issue) and develop recommendations.

Joint Law Enforcement Committee and Law Enforcement Advisory Panel Agenda, Monday, March 3, 2014, 1:30 p.m. Until 3 p.m.

Discuss the recommendations from the Law Enforcement AP.

Joint Habitat & Environmental Protection and Ecosystem-Based Management Committee Agenda, Monday, March 3, 2014, 3 p.m. Until 5:30 p.m.

1. Review the status of Coral Amendment 8, pertaining to Coral Habitat Areas of Particular Concern (HAPCs) and transit through the Oculina Bank HAPC.
2. Review the status of the Coral Reef Conservation Program's Fiscal Year (FY) 2014–16 Cooperative Agreement.
3. Receive the Spatial Representation of the Oculina Bank HAPC Options as requested by the deepwater shrimp industry.
4. Recommend approval of SAFMC policy statements and receive an update on ecosystem activities.

Southeast Data, Assessment and Review (SEDAR) Committee Agenda, Tuesday, March 4, 2014, 8:30 a.m. Until 9:30 a.m. (Note: A Portion of This Meeting Will Be Closed)

1. Receive a SEDAR activities update as well as a SEDAR Steering Committee Report.
2. Receive a report on the South Atlantic Fishery Dependent Workshop as well as the status of the Wreckfish Assessment peer review.
3. Develop recommendations for approvals of SEDAR 41 participants (South Atlantic Red Snapper and Gray Triggerfish) and SEDAR South Atlantic Shrimp Data participants. Appoint a Wreckfish chairperson and reviewers. (Closed Session)

Protected Resources Committee Agenda, Tuesday, March 4, 2014, 9:30 a.m. Until 10:30 a.m.

1. Receive an update on ongoing consultations from the Southeast Regional Office (SERO) Protected Resources Division (PRD).
2. Receive a report on: The Endangered Species Act (ESA) American Eel status review; the Atlantic Sturgeon stock assessment; the proposed critical habitat for Loggerhead Sea Turtles; and the status of the proposed listing for Red Knots.
3. Develop committee recommendations as appropriate.

Snapper Grouper Committee Agenda, Tuesday, March 4, 2014, 10:30 a.m. Until 5:30 p.m. and Wednesday, March 5, 2014, 8:30 a.m. Until 5 p.m.

1. Receive and discuss the status of commercial and recreational catches versus quotas for species under Annual Catch Limits (ACLs).
2. Receive an update on the status of Snapper Grouper amendments under formal Secretarial review.
3. Review the status of the Oculina Experimental Closed Area Evaluation Team.
4. Receive an overview of scoping comments for Regulatory Amendment 16, pertaining to the removal of the Black Sea Bass pot closure. Modify the document, choose preferred alternatives and provide guidance to staff.
5. Review Snapper Grouper Amendment 22, relating to tags that track recreational harvest of species; receive a NOAA General Counsel (GC) report on Limited Access Privilege Program (LAPP) Determination; discuss the amendment and develop guidance to staff.
6. Review Snapper Grouper Amendment 29, regarding Only Reliable Catch Stocks (ORCS) and management measures for Gray Triggerfish; receive an overview of public hearing comments as well as the amendment document; modify the document and develop recommendations for the management measures.
7. Review the options paper for Snapper Grouper Amendment 32, relating to Blueline Tilefish; modify the document; and provide guidance to staff.
8. Review the following amendments and provide guidance to staff: Snapper Grouper Amendment 20 (Snowy Grouper and Mutton Snapper); and Snapper Grouper Amendment 33/

Dolphin Wahoo Amendment 7 (fillet issue).

9. Review Snapper Grouper Regulatory Amendment 21 relating to Minimum Stock Size Threshold (MSST) and develop recommendations for formal Secretarial review.

10. Review the Generic Accountability Measures (Snapper Grouper)/Dolphin Allocation Amendment and provide guidance to staff.

11. Review the status and materials of the Visioning port meetings and provide guidance to staff.

12. Receive an economic efficiency analysis/net benefit analysis report from the Southeast Fisheries Science Center (SEFSC).

Note: There will be an informal public question and answer session with the NMFS Regional Administrator and the Council Chairman on Wednesday, March 5, 2014, beginning at 5:30 p.m.

King & Spanish Mackerel Committee Agenda, Thursday, March 6, 2014, 8:30 a.m. Until 11 a.m.

1. Receive and discuss the status of commercial and recreational catches versus ACLs for Atlantic group King Mackerel, Spanish Mackerel and Cobia.

2. Review the status of amendments under formal Secretarial review and recommend the approval of Joint Amendment 20B (Gulf King Mackerel trip limits and seasons, transit provision, regional quotas, framework, Cobia ACL) for formal Secretarial review following committee review of the amendment.

3. Review the Coastal Migratory Pelagics (CMP) Framework Amendment 1 pertaining to Spanish Mackerel ACLs along with the Gulf Council decisions and the public hearing comments. Modify the document as appropriate and recommend approval for formal Secretarial review.

4. Receive an update on the SEDAR 38 Data Workshop (Gulf and South Atlantic King Mackerel) and Gulf Council meeting.

5. Review Joint Amendment 24 (allocations) and Joint Amendment 26 (separate commercial permits), including public scoping comments and Gulf Council decisions. Provide guidance to staff.

Executive Finance Committee Agenda, Thursday, March 6, 2014, 11 a.m. Until 12 Noon

1. Receive a report on the actual Council calendar year (CY) 2014 funding levels as well as the status of the CY 2014 budget expenditures.

2. Receive an update on the activities of the Joint Committee on South Florida Management Issues and the Ad Hoc Goliath Grouper Joint Council Steering Committee.

3. Receive a report on the Council Coordination Committee (CCC) meeting.

4. Discuss Council Follow-up and priorities and address other issues as appropriate.

Dolphin Wahoo Committee Agenda, Thursday, March 6, 2014, 1:30 p.m. Until 3:30 p.m.

1. Receive updates on the status of commercial and recreational catches versus Annual Catch Limits (ACLs).

2. Review the status of Dolphin Wahoo Amendment 5, pertaining to bag limit sales of fish and changes to the ACL and the Allowable Biological Catch (ABC).

3. Review Dolphin Wahoo Amendment 7, regarding the issue of transport of fillets from Bahamian waters into United States waters, modify the amendment as appropriate and provide direction to staff.

4. Review the Generic Accountability Measures and Dolphin Allocation Amendment scoping comments, discuss the amendment and provide direction to staff.

Data Collection Committee Agenda, Thursday, March 6, 2014, 3:30 p.m. Until 5 p.m.

1. Receive an update on the status of the following amendments: The Joint South Atlantic/Gulf Generic Dealer Amendment; the Joint South Atlantic/Gulf For-Hire Reporting Amendment; and the Gulf Framework for For-Hire Reporting Amendment.

2. Review the status of the Comprehensive Ecosystem-Based Amendment 3 (CE–BA3) as well as a presentation by NOAA GC pertaining to bycatch requirements in the South Atlantic. Modify the amendment as appropriate and recommend approval for formal Secretarial review.

3. Receive an update on the Commercial Logbook Pilot Study.

4. Receive an overview, status and results of Gulf Council actions for the Joint South Atlantic/Gulf Generic Charterboat Reporting Amendment. Modify the amendment as appropriate and provide guidance to staff.

5. Receive a report on the Electronic Technology Workshop and Implementation Plan. Discuss the report and provide guidance to staff.

Note: A formal public comment session will be held on Thursday, March 6, 2014, beginning at 5:30 p.m. on the following items: Snapper Grouper Regulatory Amendment 21; Joint Amendment 20B; CMP Framework Amendment 1; and Comprehensive Ecosystem-Based Amendment 3. Following comment on these specific items, public comment will be accepted regarding any other items on the Council agenda. The amount of time provided to individuals will be determined by the Chairman based on the number of individuals wishing to comment.

Council Session: Friday, March 7, 2014, 8:30 a.m. Until 1 p.m.

8:30–8:45 a.m.: Call the meeting to order, adopt the agenda, approve the December 2013 minutes.

8:45–9:15 a.m.: The Council will receive a report from the Snapper Grouper Committee and is scheduled to either approve or disapprove Regulatory Amendment 21 for formal Secretarial review. The Council will consider other Committee recommendations and take action as appropriate.

9:15–9:45 a.m.: The Council will receive a report from the King & Spanish Mackerel Committee and is scheduled to approve or disapprove the Joint South Atlantic/Gulf Amendment 20B and the CMP Spanish Mackerel Framework Amendment for formal Secretarial review. The Council will consider other Committee recommendations and take action as appropriate.

9:45–10 a.m.: The Council will receive a report from the Dolphin Wahoo Committee. The Council will consider Committee recommendations and take action as appropriate.

10–10:30 a.m.: The Council will receive a report from the Data Collection Committee and is scheduled to either approve or disapprove Comprehensive Ecosystem-Based Amendment 3 for formal Secretarial review. The Council will consider other Committee recommendations and take action as appropriate.

10:30–10:45 a.m.: The Council will receive a report from the Law Enforcement Committee, will consider Committee recommendations and will take action as appropriate.

10:45–11 a.m.: The Council will receive a report from the Joint Habitat & Environmental Protection and Ecosystem-Based Management Committee and is scheduled to either approve or disapprove SAFMC policy statements. The Council will consider other Joint Committee recommendations and take action as appropriate.

11–11:15 a.m.: The Council will receive a report from the Protected Resources Committee, consider Committee recommendations and take action as appropriate.

11:15–11:30 a.m.: The Council will receive a report from the SEDAR Committee and is scheduled to appoint: A Wreckfish chairperson and reviewers; South Atlantic Shrimp Data

participants; and SEDAR 41 participants. The Council will consider other Committee recommendations and take action as appropriate.

11:30–11:45 a.m.: The Council will receive a report from the Executive Finance Committee and is scheduled to approve the Council Follow-up and Priorities documents. The Council will take action on the South Florida Management issues as appropriate, consider other Committee recommendations and take action as appropriate.

11:45–1 p.m.: The Council will receive status reports from SERO and the NMFS SEFSC. The Council will review and develop recommendations on Experimental Fishing Permits as necessary; review agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–03142 Filed 2–12–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board will take place as a webcast with an option to view the webcast in person at the location provided in the **ADDRESSES** section.

DATES: Monday, March 3, 2014, from 10:00 a.m. to 2:00 p.m. (Open Session).

ADDRESSES: If you are unable to log in to the webcast, there is limited space available to attend at the Defense Health Headquarters (DHHQ), Pavilion Salons B–C, 7700 Arlington Blvd., Falls Church, Virginia 22042 (escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, ''Public's Accessibility to the Meeting.'')

FOR FURTHER INFORMATION CONTACT: The Director of the Defense Health Board is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–9539, *Christine.bader@dha.mil.* For meeting information and registration, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *Kendal.Brown.ctr@dha.mil,* (703) 681–6670, Fax: (703) 681–9539.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of the Federal Advisory Committee Act.

Webcast Instructions

Please follow the instructions below to join the webcast. If you are having technical difficulties, please contact Ms. Kendal Brown at the number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Step 1: Dial-In (note: Required to have audio).

U.S. & Canada: 1–(800)–851–3547.

Access Code: 9578414.

Step 2: Web Login: *https://cc.callinfo.com/r/1qdsxi6nxpjuv&eom* and enter your full name and email address.

Please note: It is required that all participants provide the phone number from which you plan to dial-in to Ms. Kendal Brown at the number listed in the **FOR FURTHER INFORMATION CONTACT** section, in order to identify participants.

Purpose of the Meeting

The purpose of the meeting is for the Subcommittees to provide updates on the status of their individual taskings before the DHB.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the DHB meeting is open to the public from 10:00 a.m. to 2:00 p.m. on March 3, 2014. On March 3, the DHB will receive briefings from the Subcommittees to include Sustainment and Advancement of Amputee Care, Dual Loyalties of Medical Providers, Deployment Pulmonary Health, and Theater Trauma Lessons Learned. Additionally, the DHB will receive briefings on the Healthy Base Initiative, DoD–VA Program and Collaboration, and a Commander's Brief on the Defense Health Agency.

Availability of Materials for the Meeting

A copy of the agenda or any updates to the agenda for the March 6, 2014 meeting, as well as any other materials presented in the meeting, may be obtained at the meeting if attending in person or by contacting Ms. Kendal Brown at the number listed in the **FOR FURTHER INFORMATION CONTACT** section if participating via Webcast.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. The webcast is unlimited, however seating is limited and on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 12:00 p.m. on Friday, February 21 to register and make arrangements for a DHHQ escort, if attending in person. Public attendees requiring escort should arrive at the DHHQ Visitor's Entrance with sufficient time to complete security screening no later than 9:30 a.m. on March 3. To complete security screening, please come prepared to present two forms of identification and one must be a picture identification card.

Special Accommodations

Individuals requiring special accommodations to access the public meeting in person should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory

Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see the **FOR FURTHER INFORMATION CONTACT** section). Written statements should address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: February 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–03102 Filed 2–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the DoD Board of Actuaries. This meeting is open to the public.

DATES: July 24, 2014, from 1:00 p.m. to 5:00 p.m. and July 25, 2014, from 10:00 a.m. to 1:00 p.m.

ADDRESSES: 4800 Mark Center Drive, Conference Room 18, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathleen Ludwig at the Defense Human Resource Activity, DoD Office of the Actuary, 4800 Mark Center Drive, Suite 06J25–01, Alexandria, VA 22350–4000. Phone: 571–372–1993. Email: *Kathleen.A.Ludwig.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provision of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund (in accordance with the provisions of 10 U.S.C. 183 and 10 U.S.C. 2006), the Military Retirement Fund (10 U.S.C. 183 and 10 U.S.C. 1465 et seq.), and the Voluntary Separation Incentive Fund (10 U.S.C. 183 and 10 U.S.C. 1175).

Agenda: Education Benefits Fund (July 24, 1:00 p.m.–5:00 p.m.).

1. Briefing on Investment Experience
2. September 30, 2013, Valuation Proposed Economic Assumptions *
3. September 30, 2013, Valuation Proposed Methods and Assumptions—Reserve Programs *
4. September 30, 2013, Valuation Proposed Methods and Assumptions—Active Duty Programs *
5. Developments in Education Benefits

Military Retirement Fund (July 25, 10:00 a.m.–1:00 p.m.)

1. Briefing on Investment Experience
2. September 30, 2013, Valuation of the Military Retirement Fund *
3. Proposed Methods and Assumptions for September 30, 2014, Valuation of the Military Retirement Fund *
4. Proposed Methods and Assumptions for December 31, 2013, Voluntary Separation Incentive (VSI) Fund Valuation *
5. Recent and Proposed Legislation

* Board approval required

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. The Mark Center is an annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than June 16, 2014. Failure to make the necessary arrangements will result in building access being denied. It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the DoD Board of Actuaries about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Board. All written statements shall be submitted to the Designated Federal Officer (DFO) for the Board and this individual will ensure that the written statements are provided to the membership for their consideration. The DFO is Inger Pettygrove, *Inger.M.Pettygrove.civ@mail.mil;* DHRA Office of the Actuary, 4800 Mark Center Drive, Suite 06J25–01, Alexandria, VA 22350–4000; (571) 372–1998.

Statements being submitted in response to the agenda mentioned in this notice must be received by the DFO at the address listed above at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Board until its next meeting.

The DFO will review all timely submissions with the Board and ensure they are provided to all members of the Board before the meeting that is the subject of this notice.

Committee's Point of Contact: Persons desiring to attend the DoD Board of Actuaries meeting must notify Kathleen Ludwig at (571) 372–1993, or *Kathleen.A.Ludwig.civ@mail.mil,* by June 16, 2014. For further information contact Mrs. Ludwig at the Defense Human Resource Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 06J25–01, Alexandria, VA 22350–4000.

Dated: February 10, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–03155 Filed 2–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Medicare-Eligible Retiree Health Care Board of Actuaries; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the DoD Medicare-Eligible Retiree

Health Care Board of Actuaries. This meeting is open to the public.

DATES: Friday, August 8, 2014, from 10:00 a.m.to 12:00 p.m.

ADDRESSES: 4800 Mark Center Drive, Conference Room 18, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: For further information contact Mrs. Kathleen Ludwig at the Defense Human Resource Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 06J25–01, Alexandria, VA 22350–4000. Phone: (571) 372–1993. Email: *Kathleen.A.Ludwig.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of 10 U.S.C. 1114 et. seq. The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda

1. Meeting Objective

Approve actuarial assumptions and methods needed for calculating:

i. FY 2016 per capita full-time and part-time normal cost amounts
ii. September 30, 2013, unfunded liability (UFL)
iii. October 1, 2014, Treasury UFL amortization and normal cost payments

2. Trust Fund Update

3. Medicare-Eligible Retiree Health Care Fund Update

4. September 30, 2012 Actuarial Valuation Results

5. September 30, 2013 Actuarial Valuation Proposals

6. Decisions

Actuarial assumptions and methods needed for calculating:

a. FY 2016 per capita full-time and part-time normal cost amounts
b. September 30, 2013, unfunded liability (UFL)
c. October 1, 2014, Treasury UFL amortization and normal cost payments

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. The Mark Center is an annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than June 30, 2014. Failure to make the necessary arrangements will result in building access being denied. It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the DoD Medicare-Eligible Retiree Health Care Board of Actuaries about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Board.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Board and this individual will ensure that the written statements are provided to the membership for their consideration. The DFO is Inger Pettygrove, *Inger.M.Pettygrove.civ@mail.mil*; DHRA Office of the Actuary, 4800 Mark Center Drive, Suite 06J25–01, Alexandria, VA 22350–4000; (571) 372–1998.

Statements being submitted in response to the agenda mentioned in this notice must be received by the DFO at the address listed above at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Board until its next meeting.

The DFO will review all timely submissions with the Board and ensure they are provided to all members of the Board before the meeting that is the subject of this notice.

Committee's Point of Contact: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting must notify Kathleen Ludwig at (571) 372–1993, or *Kathleen.A.Ludwig.civ@mail.mil,* by June 30, 2014. For further information contact Mrs. Ludwig at the Defense Human Resource Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 06J25–01, Alexandria, VA 22350–4000.

Dated: February 10, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–03156 Filed 2–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0022]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense/Joint Staff, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system notice is entitled DWHS D03, Washington Headquarters Services (WHS) Enterprise Safety Applications Management System (ESAMS).

DATES: Comments will be accepted on or before March 17, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov/privacy/SORNs/component/osd/index.html.* The Office of the Secretary

of Defense proposes to amend one system in records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 10, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS D03

SYSTEM NAME:

Washington Headquarters Services (WHS) Enterprise Safety Applications Management System (ESAMS) (December 14, 2010, 75 FR 77849).

CHANGES:

* * * * *

SYSTEM NAME:

CLOSED—Washington Headquarters Services (WHS) Enterprise Safety Applications Management System (ESAMS).

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''This is a closed system—no new records may be added. DoD Military and civilian personnel who were employed through Washington Headquarters Services (WHS) or one of the WHS-Serviced Organizations (Office of the Secretary of Defense, Joint Chiefs of Staff, Defense Advanced Research Projects Agency, Defense Threat Reduction Agency, Missile Defense Organization, and the Pentagon Force Protection Agency) who were the subject of an accident investigation or report or required duty physicals or longitudinal monitoring and assessment between July 2011 and August 2013.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Occupational Safety and Health Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves contained in this system of records should address written inquiries to the Chief, Occupational Safety and Health Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests must include the individual's full name, Social Security Number (SSN), and current mailing address.''

* * * * *

[FR Doc. 2014–03166 Filed 2–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:30 a.m. to 1:30 p.m. on March 7, 2014.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Colonel Donald H. Myers, the Alternate Designated Federal Officer for the subcommittee, in writing at Department of Academic Affairs, 122 Forbes Avenue, Carlisle, PA 17013, by email at *donald.h.myers4.mil@mail.mil,* or by telephone at (717) 245–3907.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College and to address other administrative matters.

Proposed Agenda: The subcommittee will review and evaluate information related to the continued academic growth and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Colonel Myers, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Colonel Myers, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Colonel Myers, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements

received after this date may not be provided to the subcommittee until its next meeting.

The Alternate Designated Federal Officer will review all comments timely submitted with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. After reviewing any written comments submitted, the subcommittee Chairperson and the Alternate Designated Federal Official may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Alternate Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–03238 Filed 2–12–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery; Request for Nominations

AGENCY: Department of the Army, DoD.

ACTION: Notice; request for nominations.

SUMMARY: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered 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 cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations. The Committee is comprised of no more than nine (9) members. Subject to the approval of the Secretary of Defense, the Secretary of the Army appoints no more than seven (7) of these members. The purpose of this notice is to solicit nominations from a wide range of highly qualified persons to be considered for appointment to the Committee. Nominees may be appointed as members of the Committee and its sub-committees for terms of service ranging from one to four years. This notice solicits nominations to fill Committee membership vacancies that may occur through July 20, 2016. Nominees must be preeminent authorities in their respective fields of interest or expertise.

DATES: All nominations must be received at the address below no later than March 7, 2014.

ADDRESSES: Interested persons may submit a resume and for consideration by the Department of the Army to the Committee's Designated Federal Officer at the following address: Advisory Committee on Arlington National Cemetery, ATTN: Designated Federal Officer (DFO) (Ms. Yates), Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates, Designated Federal Officer, by email at *renea.c.yates.civ@mail.mil* or by telephone 703–614–1248.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Arlington National Cemetery was established pursuant to Title 10, United States Code, Section 4723. The selection, service and appointment of members of the Committee are covered by the Committee Charter, available on the Arlington National Cemetery Web site *www.arlingtoncemtery.mil/AboutUs/Charter.aspx.* The substance of these provisions of the Charter is as follows:

a. Selection. The Committee Charter provides that the Committee shall be comprised of no more than nine members, all of whom are preeminent authorities in their respective fields of interest or expertise. Of these, no more than seven members are nominated by the Secretary of the Army.

By direction of the Secretary of the Army, all resumes submitted in response to this notice will be presented to and reviewed by a panel of three senior Army leaders. Potential nominees shall be prioritized after review and consideration of their resumes for: Demonstrated technical/professional expertise; preeminence in a field(s) of interest or expertise; potential contribution to membership balance in terms of the points of view represented and the functions to be performed; potential organizational and financial conflicts of interest; commitment to our Nation's veterans and their families; and published points of view relevant to the objectives of the Committee. The panel will provide the DFO with a prioritized list of potential nominees for consideration by the Executive Director, Army National Military Cemeteries, in making an initial recommendation to the Secretary of the Army. The Executive Director, Army National Military Cemeteries; the Secretary of the Army; and the Secretary of Defense are not limited or bound by the recommendations of the Army senior leader panel. Sources in addition to this **Federal Register** notice may be utilized in the solicitation and selection of nominations.

b. Service. The Secretary of Defense may approve the appointment of a Committee member for a one-to-four year term of service; however, no member, unless authorized by the Secretary of Defense, may serve on the Committee or authorized subcommittee for more than two consecutive terms of service. The Secretary of the Army shall designate the Committee Co-Chairs from the total Advisory Committee membership. The Committee meets at the call of the DFO, in consultation with the Committee Co-Chairs. It is estimated that the Committee meets four times per year.

c. Appointment. The operations of the Committee and the appointment of members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations, including Department of Defense Instruction 5105.04, Department of Defense Federal Advisory Committee Management Program, available at *http://www.dtic.mil/whs/directives/corres/pdf/510504p.pdf.* Appointed members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts and consultants under the authority of Title 5, United States Code, Section 3109 and shall serve as special government employees. Committee members appointed as special government employees shall serve without compensation except that travel and per diem expenses associated with official Committee activities are reimbursable.

Additional information about the Committee is available on the Internet at: *http://www.arlingtoncemetery.mil/AboutUs/Advisory.aspx.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–03236 Filed 2–12–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0016]

Agency Information Collection Activities; Comment Request; ED–524 Budget Information Non-Construction Programs Form and Instructions

AGENCY: Department of Education (ED), Office of the Secretary/Office of the Deputy Secretary (OS).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 14, 2014.

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–2014–ICCD–0016 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, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Stephanie Valentine, 202–401–0526 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here. We will only accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

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: ED–524 Budget Information Non-Construction Programs Form and Instructions.

OMB Control Number: 1894–0008.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private sector.

Total Estimated Number of Annual Responses: 5,400.

Total Estimated Number of Annual Burden Hours: 94,500.

Abstract: The ED–524 form and instructions are included in U.S. Department of Education discretionary grant application packages and are needed in order for applicants to submit summary-level budget data by budget category, as well as a detailed budget narrative, to request and justify their proposed grant budgets which are part of their grant applications.

Dated: February 10, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–03144 Filed 2–12–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Research Fellowships Program

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

ACTION: Notice.

Overview Information: National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F–1.

DATES:

Applications Available: February 13, 2014.

Date of Pre-Application Meeting: March 6, 2014.

Deadline for Transmittal of Applications: April 14, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to conduct research on the rehabilitation of individuals with disabilities.

Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Section 204 authorizes research, demonstration projects, training, and related activities, the purposes of which are to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency, of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Act.

Note: An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299, April 4, 2013) (the Plan) when preparing its application. The Plan is organized around the following outcome domains: (1) Community living and participation; (2) health and function; and (3) employment and can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Priority: The Research Fellowships Program permits two types of fellowships, Distinguished and Merit. At this time, NIDRR is choosing to fund Merit Fellowships. Under the Merit Fellowship competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2014, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

The Secretary is particularly interested in applications from eligible applicants who are individuals with disabilities.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61, and parts 77, 81, 82, 84, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 356. (d) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested

$110,000,000 for the NIDRR program for FY 2014, of which we intend to use an estimated $375,000 for Merit Fellowships. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of approved but unfunded applicants from this competition.

Estimated Range of Awards: $74,500 to $75,000 for Merit Fellowships. (This fellowship is described in the *Eligible Applicant* section of this notice.)

Estimated Average Size of Awards: $74,500.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for Merit Fellowships for a single year. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Five.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months. We will reject any application that proposes a project period other than 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Eligible individuals must: (1) SAtisfy the requirements of 34 CFR 75.60 and 75.61 and (2) have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities.

To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

Note: Institutions are not eligible to be recipients of research fellowships.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133F.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 24 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit for the application narrative does not apply to the documents you upload to the Grants.gov Apply site under the other two headings: ED Project Abstract and Other Attachments. The ED Project Abstract Form should contain only your one-page abstract. The Other Attachments Form should contain all other attachments, including your bibliography, eligibility statement, resume/curriculum vitae, and letters of recommendation/support. Information regarding the protection of human subjects, if applicable, should be included under the Other Attachments Form or in the place provided on the SF–424 Supplemental Form. You do not need to upload a table of contents for your application, as this will be automatically generated by Grants.gov.

We will reject your application if you exceed the page limit.

In concert with the balance principle described in NIDRR's Long-Range Plan, for Fiscal Years 2013–2017 (78 FR 20299, April 4, 2013), applicants for Merit Fellowships should specify in their abstract and application narrative which of NIDRR's major domains of individual well-being their research will focus on: (a) Community living and participation, (b) employment, or (c) health and function. Although applicants may propose projects that address more than one domain, they should select the applicable competition based on the primary domain addressed in their proposed project.

3. *Submission Dates and Times:*

Applications Available: February 13, 2014.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on March 6, 2014. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: April 14, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to

section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal.

The Merit Fellowship awards are one Full Time Equivalent (FTE) award. Fellows must work principally on the fellowship during the term of the fellowship award. We define ''one FTE'' as equal to 40 hours per week. No fellow is allowed to be a direct recipient of Federal government grant funds in addition to those provided by the Merit Fellowship grant (during the duration of the fellowship award performance period). Fellows may, subject to compliance with their institution's policy on additional employment, work on a Federal grant that has been awarded to the fellow's institution. Merit Fellows may be allowed to dedicate additional hours beyond their one FTE requirement for the fellowship to other work during their fellowship grant performance period, if this is in keeping with the guidelines offered by their home institutions. In other words, NIDRR defers to the guidelines of the fellows' home institutions regarding the admissibility of work in excess of the one FTE dedicated to the fellowship. NIDRR strongly recommends that any additional hours be limited to .25 FTE (or 10 hours per week), but requires that additional hours not exceed .5 FTE (or 20 hours per week).

To satisfy the requirement that fellows devote one FTE to the fellowship work, applicants must include in their Eligibility Statement a plan for how they will fulfill the obligation to work principally on the fellowship during the term of the fellowship award. We will reject your application if you fail to include such a plan in your Eligibility Statement.

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Requirements for Registering for Grants.gov and Submitting Your Application:*

All individuals applying for a research fellowship must register at *www.Grants.gov* prior to submitting their application. To register with Grants.gov you must know the Funding Opportunity Number (FON) of the grant opportunity you are applying for. You can obtain this number by searching Grants.gov using the CFDA number, 84.133. This search will lead you to available NIDRR solicitations and identify the FON for each. You will use the FON to register in Grants.gov. Once you register with Grants.gov, to facilitate the safe and secure transfer of your application to the Department, you will be asked to create a profile with your username and password, which will be used to identify you within the system, and create an electronic signature. Details on registering with Grants.gov as an individual are outlined in the following Grants.gov tutorial: *www.grants.gov/assets/IndividualRegistrationOverview.html*.

To register with Grants.gov, you do not have to provide a Data Universal Numbering System Number, a Taxpayer Identification Number, or your Social Security Number (SSN). You also do not have to complete a Central Contractor Registry or System for Award Management registration in order to access Grants.gov or submit your application.

However, your SSN is required to complete your application for a research fellowship.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*.

Applications for grants under the Research Fellowships Program, CFDA Number 84.133F–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Research Fellowships Program at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- To ensure that you submit your application in a timely manner to the Grants.gov system, you should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*. In

addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors. You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. It is your responsibility to ensure that your submitted application has met all of the of the Department's requirements, including submitting only PDF documents, as prescribed in this notice and in the application instructions.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F–1), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F–1), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high-quality products. Performance measures for the Research Fellowships Program include—:

- The number of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through a review of grantee performance and products. For these reviews, NIDRR uses information submitted by grantees as part of their final performance report. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes. Because grants made under the Research Fellowships Program are limited to a maximum of 12 months, they are not eligible for continuation awards.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@ed.gov*.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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: February 10, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–03214 Filed 2–12–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Personnel Preparation in Special Education, Early Intervention, and Related Services

Correction

In notice document 14–02710 beginning on page 7429 in the issue of Friday, February 7, 2014 make the following corrections:

On page 7434, in the table, under the heading ''Contact person'':

1. In the first entry, ''*maryan.mcdermott@ed.gov*'' should read ''*maryann.mcdermott@ed.gov*''.

2. In the second entry, ''*maryan.mcdermott@ed.gov*'' should read ''*maryann.mcdermott@ed.gov*''.

3. In the third entry, ''Maryann McDermott, 202–245–7439, *maryan.mcdermott@ed.gov,* PCP, Room 4062'' should read ''Sarah Allen, 202–245–7875, *sarah.allen@ed.gov,* PCP, Room 4105''.

4. In the fourth entry, ''*dawn.elis@ed.gov.*'' should read ''*dawn.ellis@ed.gov*''.

[FR Doc. C1–2014–02710 Filed 2–12–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Advanced Rehabilitation Research Training Program

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

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Advanced Rehabilitation Research Training (ARRT) Program.

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133P–1, 84.133P–3, and 84–133P–4.

Note: This notice invites applications for three separate competitions. See the chart in the *Award Information* section of this notice for funding and other key information for each of the three competitions.

DATES:

Applications Available: February 13, 2014.

Date of Pre-Application Meeting: March 6, 2014.

Deadline for Transmittal of Applications: April 14, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Advanced Rehabilitation Research Training

The purpose of NIDRR's ARRT program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to provide advanced research training and experience to individuals with doctorates, or similar advanced degrees, who have clinical or other relevant experience. ARRT projects train rehabilitation researchers, including researchers with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act, and that improve the effectiveness of services authorized under the Rehabilitation Act.

Additional information on the ARRT program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#ARRT.*

Priority: There is one priority for the three competitions, which will each address one of NIDRR's major domains of individual well-being: (a) Community living and participation, (b) employment, or (c) health and function. This priority is from the notice of final priority for this program, published in the **Federal Register** on June 11, 2013 (78 FR 34901).

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from these competitions, this priority is an absolute priority for each of the three competitions. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority in a manner consistent with the applicable competition.

This priority is:

Advanced Rehabilitation Research Training Program.

The Assistant Secretary for Special Education and Rehabilitative Services announces a new priority for the Advanced Rehabilitation Research Training (ARRT) program. ARRT projects must provide advanced research training to eligible individuals to enhance their capacity to conduct high-quality multidisciplinary rehabilitation and disability research to improve outcomes for individuals with disabilities in one of NIDRR's major domains of individual well-being: (a) Community living and participation, (b) employment, or (c) health and function.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priority for this program, published in the **Federal Register** on June 11, 2013 (78 FR 34901).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: See chart.
Maximum Award: See chart.

Note: Consistent with 34 CFR 75.562, indirect cost reimbursement for a training grant is limited to eight percent of a modified total direct cost base, defined as total direct costs less stipends, tuition and related fees, equipment, and the amount of each subaward in excess of $25,000. Indirect costs can also be determined in the grantee's negotiated

indirect cost rate agreement if that amount is less than the amount calculated under the formula above.

Estimated Number of Awards: See chart.

Note: The Department is not bound by any estimates in this notice.

CFDA No. and name	Applications available	Deadline for transmittal of applications	Estimated available funds [1]	Maximum award amount (per year) [2 3]	Estimated number of awards	Project period (months)
84.133P–1 ARRT—Community Living and Participation.	February 13, 2014	April 14, 2014	$150,000	$150,000	1	60
84.133P–3 ARRT—Employment	February 13, 2014	February 13, 2014	150,000	150,000	1	60
84.133P–4 ARRT—Health and Function.	February 13, 2014	February 13, 2014	150,000	150,000	1	60

[1] Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 or in subsequent years from the list of unfunded applicants from this competition.

[2] We will reject any application that proposes a budget exceeding the maximum award amount for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

[3] The maximum award amount includes both direct and indirect costs.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify these competitions as follows: CFDA number 84.133P–1; 84.133P–3; or 84.133P–4.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for the competitions announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

Applicants should clearly indicate on the application cover sheet (SF 424 Form, line 4) whether they are applying for an ARRT program grant in the major domain of (a) community living and participation (CFDA number 84.133P–1); (b) employment (CFDA number 84.133P–3); or (c) health and function (CFDA number 84.133P–4). Although applicants may propose projects that address more than one domain, they should select the applicable competition based on the primary domain addressed in their proposed project.

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (Plan) when preparing its application. The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

3. *Submission Dates and Times:*

Applications Available: February 13, 2014.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held March 6, 2014. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: April 14, 2014.

Applications for grants under the competitions announced in this notice must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:* Applications for grants under the ARRT program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the ARRT program competitions announced in this notice (CFDA numbers 84.133P–1, 84.133P–3, and 84.133P–4) must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the ARRT program competitions announced in this notice at *www.Grants.gov.* You must search for the downloadable application package for the applicable competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133P).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- To ensure that you submit your application in a timely manner to the Grants.gov system, you should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*. In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your

application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors. You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. It is your responsibility to ensure that your submitted application has met all of the of the Department's requirements, including submitting only PDF documents, as prescribed in this notice and in the application instructions.

For instructions on how to verify that your application was submitted on time and was successfully validated as having no disqualifying errors, refer to the document titled ''Grants.gov Submission Tips'' in the Application Package for New Grants under the ARRT Program.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133P–1; 84.133P–3; and 84.133P–4) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133P–1; 84.133P–3; and 84.133P–4) 550 12th Street SW., Room 7041, Potomac Center Plaza Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. **Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for the competitions announced in this notice are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR Parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN) or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR Part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Performance measures for the ARRT program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

For these reviews, NIDRR uses information submitted by grantees as part of its Annual Performance Reports. Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html*.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

If you use a TDD or a TTY call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363.

If you use a TDD or a TTY call FRS, toll-free, at 1–800–877–8339.

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

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

Dated: February 10, 2014.

Michael K. Yudin,

Acting Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–03209 Filed 2–12–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–121–LNG]

Sabine Pass Liquefaction, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on September 10, 2013, by Sabine Pass Liquefaction, LLC (SPL), requesting long-term authorization to export liquefied natural gas (LNG) produced from domestic sources in a volume equivalent to approximately 314 billion cubic feet per year of natural gas (Bcf/yr). SPL requests authorization to export the LNG for a 20-year term from the Sabine Pass LNG Terminal in Cameron Parish, Louisiana. In the portion of SPL's Application subject to this Notice, SPL seeks authorization under § 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b(a), to export LNG to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries), and with which trade is not prohibited by U.S. law or policy.[1] SPL seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. SPL requests that this authorization commence on the earlier of the date of first export or eight years from the date the authorization is issued.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, April 14, 2014.

ADDRESSES: Electronic Filing by email: *fergas@hq.doe.gov.*

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

SPL states that, together with its affiliate, Sabine Pass LNG, L.P. (Sabine Pass LNG), it is developing a liquefaction project consisting of four LNG production trains (Trains 1 through 4) located at the Sabine Pass LNG Terminal (Liquefaction Project).[2] Additionally, SPL states that it has announced plans to construct two additional LNG production trains—Trains 5 and 6 (Liquefaction Expansion Project)—for a total of six trains.

Applicant. SPL, a limited liability company with its principal place of business in Houston, Texas, is an indirect subsidiary of Cheniere Energy Partners, L.P. (Cheniere Partners). Cheniere Partners is a Delaware limited partnership owned by Cheniere Energy, Inc. (Cheniere Energy), with its primary place of business in Houston, Texas. Cheniere Energy is a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy is developing the Sabine Pass LNG Terminal in Louisiana, as well as other LNG terminals and natural gas pipelines on the Gulf Coast. SPL states that it is authorized to do business in the States of Texas and Louisiana.

Procedural History. SPL provides an overview of the history and/or existing authorizations associated with the Liquefaction Project and proposed Liquefaction Expansion Project, which is summarized as follows:

On September 7, 2010, DOE/FE issued DOE/FE Order No. 2833, in which it authorized SPL to export LNG from the Sabine Pass LNG Terminal to FTA nations in a volume totaling 803 Bcf/yr of natural gas (2.2 Bcf per day (Bcf/d)).[3]

Subsequently, on April 16, 2012, the Federal Energy Regulatory Commission (FERC) authorized the construction and operation of the Liquefaction Project.[4] SPL notes that Trains 1 through 4 are currently under construction.

On August 7, 2012, in DOE/FE Order No. 2961–A, DOE/FE granted final authorization to SPL to export LNG from the Sabine Pass LNG Terminal to non-FTA countries in a volume equivalent to approximately 803 Bcf/yr of natural gas (2.2 Bcf/d).[5] Therefore, the total, non-

[1] In its Application, SPL also requested authorization to export LNG to any nation that currently has, or in the future develops into, a FTA requiring national treatment for trade in natural gas (FTA countries). On January 22, 2014, DOE/FE granted that portion of SPL's Application pursuant to NGA § 3(c), 15 U.S.C. 717b(c). *See Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 3384, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Sabine Pass LNG Terminal to Free Trade Agreement Nations (Jan. 22, 2014).

[2] SPL states that the Sabine Pass LNG Terminal is currently being used for the import, storage, and vaporization of LNG.

[3] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2833, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Free Trade Nations (Sept. 7, 2010).

[4] *Sabine Pass Liquefaction, LLC & Sabine Pass LNG, L.P.,* 139 FERC ¶ 61,039 (2012), *reh'g denied,* 140 FERC ¶ 61,076 (2012).

[5] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961–A, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (Aug. 7, 2012). This order finalized the conditional authorization granted to SPL in DOE/FE Order No. 2961, dated May 20, 2011, to export domestically produced LNG from the Sabine Pass LNG Terminal to non-FTA nations.

additive volume of LNG authorized in both DOE/FE Order No. 2833 (FTA) and No. 2961–A (non-FTA) is equivalent to 803 Bcf/yr of natural gas.

On February 27, 2013, SPL and its affiliates (Sabine Pass LNG and Sabine Pass Liquefaction Expansion, LLC) sought authorization from FERC to initiate the pre-filing review process for the Liquefaction Expansion Project, which would consist of siting, constructing, and operating Trains 5 and 6.[6] SPL states that the peak combined LNG production capacity of Trains 5 and 6 is estimated to be 503 Bcf/yr of natural gas, or 251.5 Bcf/yr for each train.

Most recently, DOE/FE granted SPL two additional long-term export authorizations to FTA countries. First, on July 11, 2013, in DOE/FE Order No. 3306, DOE/FE authorized SPL to export LNG in a volume equivalent to 101 Bcf/yr of natural gas, pursuant to a LNG Sale and Purchase Agreement (SPA) with Total Gas & Power North America, Inc. (TGPNA).[7] Second, on July 12, 2013, in DOE/FE Order No. 3307, DOE/FE issued a similar authorization in a volume equivalent to 88.3 Bcf/yr of natural gas, pursuant to a SPA with Centrica plc (Centrica).[8] SPL's applications for non-FTA export authorization under the terms of its SPAs with TGPNA and Centrica are pending in DOE/FE Docket Nos. 13–30–LNG and 13–42–LNG, respectively.

Current Application

In this Application, SPL requests long-term authorization to export any surplus LNG from the Sabine Pass LNG Terminal to both FTA and non-FTA countries—specifically, any volume of natural gas produced from Trains 5 and 6 that is not already committed for export under its SPAs with TGPNA and Centrica, in an amount not to exceed the equivalent of 314 Bcf/yr of natural gas for the requested 20-year term.[9] DOE/FE recently granted the FTA portion of SPL's Application in DOE/FE Order No. 3348, pursuant to NGA section 3(c), 15 U.S.C. 717b(c).[10] The portion of SPL's Application that seeks authorization to export domestically produced LNG to non-FTA countries will be reviewed pursuant to NGA section 3(a), 15 U.S.C. 717b(a), and is the subject of this Notice.

SPL seeks authorization to export the LNG for a 20-year term, commencing on the earlier of the date of first export or eight years from the date the authorization is issued. SPL is requesting this authorization to export LNG on its own behalf and as agent for other parties who will hold title to the LNG at the time of export. SPL states that it will comply with all DOE/FE requirements for exporters and agents, including registration requirements articulated in recent DOE/FE orders.

SPL states that it intends to purchase natural gas to be used as fuel and feedstock for LNG production from the interstate and intrastate grid at points of interconnection with other pipelines and with points of liquidity, both upstream and downstream of the Cheniere Creole Trail Pipeline system and other systems that interconnect with the Liquefaction Expansion Project. SPL anticipates that the Liquefaction Expansion Project will have access to multiple interstate and intrastate pipeline systems, enabling it to purchase natural gas from conventional and unconventional basins across the Gulf Coast region and throughout the United States. SPL notes that this supply of natural gas can be sourced in large volumes in the spot market or pursued under long-term arrangements. SPL states that, to date, it has not entered into any purchase agreements for the purpose of supplying natural gas feedstock for the proposed exports.

Additionally, SPL states that it has not yet entered into any long-term gas supply or export agreements in connection with the proposed exports. According to SPL, it is not submitting transaction-specific information at this time, but states that it will file, or cause to be filed, the transaction-specific information (*e.g.,* long-term supply and/or export agreements) requested in Section 590.202(b) of DOE/FE's regulations (10 CFR 590.202(b)), consistent with DOE/FE precedent.[11]

Citing Section 590.402 of DOE's regulations,[12] SPL requests that DOE/FE grant its Application and issue a conditional non-FTA export authorization before March 31, 2014, followed by issuance of a final order immediately upon FERC's completion of the environmental review of the Liquefaction Expansion Project by FERC, as discussed below.

Public Interest Considerations

SPL states that DOE/FE should grant the requested authorization because there is ample evidence in the public record that exports of LNG, such as those proposed by SPL in the Application, are in the public interest.

According to SPL, DOE/FE previously determined that LNG exports from the Liquefaction Project were in the public interest when it issued Orders No. 2961 and 2961–A—the conditional and final non-FTA authorizations issued to SPL and discussed above. SPL states that, in granting those orders in FE Docket No. 10–111–LNG, DOE/FE pointed to market studies and other evidence that SPL submitted in the proceeding, which (according to SPL) demonstrated the substantial economic and public benefits that are likely to follow from exports of natural gas as LNG. SPL asserts that the same rationale applies here to show the public benefits associated with the proposed exports. It therefore incorporates by reference the record in its earlier non-FTA proceeding. SPL also references the macroeconomic study commissioned by DOE and conducted by NERA Economic Consulting in 2012 (NERA Study),[13] as well as letters from members of the United States Congress submitted in response to the NERA Study, which SPL states expressed their approval of the export of domestic natural gas as LNG. Finally, SPL states that, because it intends to sell natural gas from Trains 5 and 6 the Liquefaction Expansion Project under contractual arrangements that will be priced competitively with domestic natural gas, it will satisfy the public interest standard as set forth in DOE's Policy Guidelines.[14]

Next, SPL points to the current supply/demand balance of natural gas in the United States in asserting that the proposed exports will not impinge on any national or regional need for the gas. SPL addresses these issues in Appendix B to the Application, entitled ''Further Discussion of the Projected Need for the Natural Gas to be

[6] *See* FERC Docket No. PF13–8–000.

[7] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 3306, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Total Gas & Power North America, Inc. from the Sabine Pass LNG Terminal to Free Trade Agreement Nations (July 11, 2013).

[8] *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 3307, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Centrica plc from the Sabine Pass LNG Terminal to Free Trade Agreement Nations (July 12, 2013).

[9] SPL states that its obligation to deliver LNG under the two SPAs will arise when the fifth LNG train becomes commercially operable. SPL also states, however, that its delivery obligations under its SPAs are not tied to individual LNG trains.

[10] *See supra* n.1

[11] App. at 8–9 (citing *Lake Charles Exports, LLC,* DOE/FE Order No. 3324, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel From the Lake Charles Terminal to Non-Free Trade Agreement Nations (Aug. 7, 2013)).

[12] 10 CFR 590.402.

[13] NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 3, 2012), available at *http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf* [NERA Study].

[14] *Policy Guidelines & Delegation Orders Relating to the Regulation of Imported Natural Gas,* 49 FR 6684 (Feb. 22, 1984).

Exported.'' Specifically, SPL states as follows:

(1) The Liquefaction Expansion Project supports and encourages the continued development of natural gas resources during times when domestic prices of natural gas are depressed, and subsidizes the production of a quantity of natural gas that can be deployed on short notice when and if market prices induce the cancellation of the export of LNG cargoes, thereby mitigating volatility that would otherwise arise and ensuring that domestic supplies will be available over the duration of commodity market cycles.

(2) SPL previously commissioned a report from Advanced Resources International (ARI), entitled *U.S. Natural Gas Resources and Productive Capacity: Mid-2012* (ARI Resource Report), to assess the scope of domestic natural gas resources and its potential for future recovery. SPL states that the ARI Resource Report demonstrates that the United States has significant natural gas resources available to meet projected future domestic needs, including the quantities contemplated for export under this Application. SPL further states that the ARI Resource Report establishes that the availability of new natural gas reserves is likely to continue expanding into the future, as new unconventional formations are discovered and the oil and gas industry continues to improve drilling and extraction techniques.

(3) SPL states that the United States Energy Information Administration's (EIA) *Annual Energy Outlook 2013* (AEO 2013) supports the assumption that the domestic natural gas resource base continues to expand rapidly. According to SPL, AEO 2013 forecasts that domestic dry natural gas production will increase by an average of 1.3% per year through 2040. SPL states that AEO 2013 also predicts U.S. dry natural gas production will total 33.14 trillion cubic feet (Tcf) by 2040, a 44.1% increase from production levels of 23.0 Tcf in 2011. SPL further notes that the AEO 2013 Reference Case projects that domestic demand growth for natural gas will average 0.7% annually through 2040, with domestic demand projected to expand to 29.54 Tcf (80.9 Bcf/d) by 2040. According to SPL, over this same period of time, domestic natural gas production is projected to grow by 1.3% per year on average, or approximately twice the rate of growth in domestic natural gas demand. SPL cites AEO 2013 in stating the United States will become a net exporter of natural gas after 2020.

In summary, SPL states that domestic natural gas resources are currently available for export and will not interfere with the public interest. SPL cites the ARI Resource Report, EIA's AEO 2013, and other publicly-available information in stating that the United States has sufficient natural gas resources available at modest prices to meet projected domestic demand over the next 25 years. According to SPL, these reports indicate that the availability of new natural gas reserves is likely to continue expanding in the future, as new unconventional formations are discovered and drilling and extraction techniques are improved. SPL maintains that this anticipated future surplus of deliverable supply, in excess of domestic need, demonstrates that the resources proposed for export by SPL from the Liquefaction Expansion Project are not required to meet domestic need.

Additional details can be found in Appendix B of the Application, which has been posted at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/13_121_lng_fta1.pdf.*

Environmental Impact

SPL states that the potential environmental impact of the Liquefaction Expansion Project will be reviewed by FERC as the lead agency for the purposes of coordinating all applicable federal authorizations and complying with the National Environmental Policy Act (NEPA). SPL anticipates that DOE/FE will participate as a cooperating agency in FERC's environmental review process. SPL maintains that DOE/FE has adopted regulations of the Council on Environmental Quality (CEQ) that govern its role as a cooperating agency in the NEPA process, and that these regulations require DOE to cooperate with the other agencies in developing environmental information. Finally, SPL states that CEQ's regulations further provide for DOE/FE to adopt FERC's findings, so long as FERC has satisfactorily addressed any comments raised by DOE/FE in its role as a cooperating agency.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). In reviewing the Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE will also consider other relevant issues, including the impact on the U.S. economy (GDP), consumers, and industry; job creation; U.S. balance of trade; international considerations; and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 13–121–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES** before 4:30 p.m. EST. All filings must include a reference to FE

Docket No. 13–121–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on February 7, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2014–03162 Filed 2–12–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9906–69–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, City of Grand Rapids, Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the City of Grand Rapids' request to revise its General Pretreatment Regulations for Existing and New Sources of Pollution EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective February 13, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 23, 2012, the City of Grand Rapids Environmental Services Department (Grand Rapids ESD) submitted an application titled ''LinkoExchange System'' for revision of its EPA-authorized authorized part 403 program under title 40 CFR. EPA reviewed Grand Rapids ESD's request to revise its EPA-authorized part 403—General Pretreatment Regulations for Existing and New Sources of Pollution program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Grand Rapids ESD's request to revise its Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution program to allow electronic reporting under 40 CFR part 403 is being published in the **Federal Register**.

Grand Rapids ESD was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Dated: January 30, 2014.

Andrew Battin,

Director, Office of Information Collection.

[FR Doc. 2014–03178 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9906–63–OAR]

Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen Primary NAAQS Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public

meeting of the Clean Air Scientific Advisory Committee (CASAC) Oxides of Nitrogen Primary National Ambient Air Quality Standards (NAAQS) Review Panel to peer review EPA's *Integrated Science Assessment (ISA) for Oxides of Nitrogen—Health Criteria (External Review Draft—November 2013)* and *Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide (External Review Draft).*

DATES: The CASAC Oxides of Nitrogen Primary NAAQS Review Panel meeting will be on Wednesday, March 12, 2014 from 9:00 a.m. to 5:30 p.m. (Eastern Time) and on Thursday, March 13, 2014 from 8:30 a.m. to 3:30 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Hilton Garden Inn Durham Southpoint, 7007 Fayetteville Road, Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain information concerning the public meeting may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone/voice mail at (202) 564–2050 or at *yeow.aaron@epa.gov.* General information about the CASAC, as well as any updates concerning the meeting announced in this notice, may be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and of adverse effects which may result from various strategies to attain and maintain air quality standards. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including oxides of nitrogen. EPA is currently reviewing the primary (health-based) NAAQS for nitrogen dioxide (NO_2), as an indicator for health effects caused by the presence of oxides of nitrogen in the ambient air.

For purposes of the review of the oxides of nitrogen air quality criteria for health and the primary NAAQS for nitrogen dioxide, the CASAC Oxides of Nitrogen Primary National Ambient Air Quality Standards Review Panel was formed following a request for public nominations of experts (77 FR 63827, October 17, 2012). Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Oxides of Nitrogen Primary NAAQS Review Panel will hold a public meeting to peer review EPA's *Integrated Science Assessment (ISA) for Oxides of Nitrogen—Health Criteria (External Review Draft—November 2013)* and *Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide (External Review Draft).* The CASAC Oxides of Nitrogen Primary NAAQS Review Panel and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The CASAC Oxides of Nitrogen Primary NAAQS Review Panel previously provided individual consultative comments on EPA's *Draft Plan for the Development of the Integrated Science Assessment for Nitrogen Oxides—Health Criteria (May 2013)* as reported in a letter to the EPA Administrator, dated June 18, 2013 (EPA–CASAC–13–006).

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (External Review Draft—November 2013)* should be directed to Dr. Molini Patel (*patel.molini@epa.gov*) and technical questions concerning the *Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide (External Review Draft)* should be directed to Ms. Beth Hassett-Sipple (*hassett-sipple.beth@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Interested members of the public may submit relevant written or oral information on the topic of this advisory activity, and/or the group conducting the activity, for the CASAC to consider during the advisory process. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by March 5, 2014 to be placed on the list of public speakers. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by March 5, 2014 so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to each meeting to give EPA as much time as possible to process your request.

Dated: February 5, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2014–03180 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0112; FRL–9905–39]

Toxic Substances Control Act Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of test data submitted pursuant to a test rule issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). This document identifies each chemical substance or mixture for which test data have been received; lists uses or intended uses of such chemical substance or mixture; and describes the nature of the test data received. This is part of EPA's commitment to strengthen its chemicals management programs by improving access to and the usefulness of chemical information. The goal is for people to easily get information to make safe chemical choices.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8089; fax number: (202) 564–4765; email address: *calvo.kathy@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0112, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Test Data Submissions

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) (15 U.S.C. 2603(a)). Each notice must:

1. Identify the chemical substance or mixture for which data have been received.

2. List the uses or intended uses of such chemical substance or mixture and the information required by the applicable standards for the development of test data.

3. Describe the nature of the test data developed. EPA has received test data for the following test rule:

EPA received data on three chemical substances listed in the TSCA section 4 test rule entitled ''Testing for Certain High Production Volume Chemicals; Third Group of Chemicals,'' published in the **Federal Register** of October 21, 2011 (76 FR 65385) (FRL–8885–5) (docket ID number EPA–HQ–OPPT–2009–0112).

The table in this unit contains the described information required by TSCA section 4(d). See the applicable CFR citation, listed in the title of the table, for test data requirements. Data received can be found by referencing the docket ID number and document numbers listed in the table. See Unit I.B. for additional information about dockets. EPA reviews of test data are added to the appropriate docket upon completion.

TABLE—DATA RECEIVED IN RESPONSE TO TSCA SECTION 4 TEST RULE AT 40 CFR 799.5089, TESTING OF CERTAIN HIGH PRODUCTION VOLUME CHEMICALS; THIRD GROUP OF CHEMICALS, DOCKET IDENTIFICATION NUMBER EPA–HQ–OPPT–2009–0112

Chemical identity	Uses	Data received	Document No.
2-Butenedioic acid (2E)-,di-C8-18-alkyl esters (CAS No. 68610–90–2).	Industrial manufacturing lubricant	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test in the Rat; Water Solubility.	0216
1-Decene, sulfurized (CAS No. 72162–15–3).	Used as extreme-pressure agent in end uses such as metalworking, auto and industrial gear, oils and greases, and to some extent hydraulic fluids.	Toxicity to Plants; Acute Oral Toxicity; Bacterial Reverse; Mutation; Chromosomal Aberration.	0112
		Validation of an Analytical Method; Boiling Temperature; Vapor Pressure; Water Solubility; Partition Coefficient.	0161
Benzenesulfonyl chloride (CAS No. 98–09–9).	Chemical intermediate for benzene sulfonamides, thiophenol, glybuzole, n-2-chloroethyl amides, and benzonitrile; Reagent for Friedel-Crafts sulfonylation.	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test in the Rat.	0217

Note: CAS No. = Chemical Abstracts Service Registry Number.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances.

Dated: February 4, 2014.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2014–03171 Filed 2–12–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 14, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov<mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov<mailto:Cathy.Williams@fcc.gov>*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03–123, FCC 07–186.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local and Tribal Government.

Number of Respondents and Responses: 5,733 respondents and 5,898 responses.

Estimated Time per Response: 1—15 hours.

Frequency of Response: Annual and on-occasion reporting requirements; Recordkeeping requirement; Third Party Disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority can be found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327.

Total Annual Burden: 28,085 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: The Commission is submitting this modified information collection to the Office of Management and Budget (OMB) to transfer burden hours and costs associated with regulations under section 225 of the Communications Act (Act), as previously approved under OMB control number 3060–1111, to this information collection. In 2007, the Commission released the *Section 225/255 VoIP Report and Order,* published at 72 FR 43546, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under sections 225 and 255 of the Act to interconnected voice over Internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS (''public access to information''). Specifically, the burden hours and costs associated with this public access information rule are being transferred from OMB control number 3060–1111 to this collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–03084 Filed 2–12–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13–268; DA 14–63]

Closed Auction of AM Broadcast Construction Permits Scheduled for May 6, 2014; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 84

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document summarizes the procedures and minimum opening bids for the upcoming auction of AM Broadcast construction permits (Auction 84). The Public Notice summarized here is intended to familiarize applicants with the procedures and other requirements for participation in the auction.

DATES: Beginning on February 19, 2014, and until 6:00 p.m. Eastern Time (ET) on March 4, 2014, Auction 84 applicants may review, verify or update their previously-filed short-form applications electronically. Bidding in Auction 84 will start on May 6, 2014.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For legal and general auction questions: Lynne Milne or Kathryn Hinton at (202) 418–0660; For auction process and procedures: Jeff Crooks or Linda Sanderson at (202) 418–0660. *Media Bureau, Audio Division:* For licensing information, service rule and other questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 84 Procedures Public Notice* released on January 27, 2014. The complete text of the *Auction 84 Procedures Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 during its regular business hours. The *Auction 84 Procedures Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or Web site: *http://www.BCPIWEB.com.* The *Auction 84 Procedures Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/84/,* or by using the search function for AU Docket No. 13–268 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. General Information

A. Background

1. On November 18, 2013, the Wireless Telecommunications and Media Bureaus (the Bureaus) released a public notice seeking comment on competitive bidding procedures to be used in Auction 84. Four parties submitted filings in response to the *Auction 84 Comment Public Notice,* 78 FR 72081, December 2, 2013.

2. On January 27, 2014, the Bureaus released a public notice that established the procedures and minimum opening bid amounts for the upcoming Auction 84 that will resolve pending groups of mutually exclusive applications (MX groups) for AM construction permits identified in Attachment A of the *Auction 84 Procedures Public Notice.* Auction 84 is a closed auction with participation limited to those parties that are designated as an applicant for this auction on Attachment A of the *Auction 84 Procedures Public Notice.*

B. Construction Permits in Auction 84

3. Auction 84 will offer construction permits for 22 new commercial AM stations. A list of the locations and frequencies of these stations is included in Attachment A of the *Auction 84 Procedures Public Notice.*

4. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A to the *Auction 84 Procedures Public Notice.* All applicants within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A.

5. Two applicants sought removal of certain MX groups from this auction, and one of those requests was opposed by a third applicant. For the reasons discussed in the *Auction 84 Procedures Public Notice,* the Bureaus declined the requests to remove those MX groups from this auction.

C. Rules and Disclaimers

i. Relevant Authority

6. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's AM broadcast service and competitive bidding requirements as well as Commission orders concerning competitive bidding of broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 84 Procedures Public Notice* and any future public notices that may be released in this proceeding.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 84.

ii. Prohibited Communications and Compliance With Antitrust Laws

8. To ensure the competitiveness of the auction process 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

9. The prohibition on certain communications in 47 CFR 1.2105(c) applies to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. In broadcast services, the ''geographic license area'' is the market designation of the particular service. In Auction 84, this prohibition applies to all applicants that have applied for construction permits for either the same geographic license area or the same MX group.

10. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines ''applicant'' as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

b. Prohibition Applies Until Down Payment Deadline

11. 47 CFR 1.2105(c)'s prohibition on certain communications became effective at the initial short-form application filing deadline pursuant to which an Auction 84 short-form application was filed (either January 30, 2004 or October 5, 2007) and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

12. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's

bids or bidding strategy. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

13. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations, including capital calls, requests for additional funds or use of the Commission's bidding system. Applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. Similarly, an applicant's public statement of intent not to participate in Auction 84 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c).

d. Disclosure of Bidding Agreements and Arrangements

14. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

15. If parties had agreed in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties did not reach any such agreement by the short-form filing deadline, they may not negotiate, discuss or communicate with any other applicant any information covered by the rule until after the down payment deadline.

e. 47 CFR 1.2105(c) Certification

16. By electronically submitting a short-form application, each applicant in Auction 84 certified its compliance with 47 CFR 1.2105(c) and 73.5002(d). In particular, each applicant has certified under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid. However, the Bureaus caution that merely having filed a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty To Report Prohibited Communications

17. An applicant is required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii). 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

g. Procedure for Reporting Prohibited Communications

18. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants in violation of 47 CFR 1.2105(c).

19. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 84 Procedures Public Notice.* For Auction 84, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Margaret W. Wiener at the following email address: *auction84@fcc.gov.* If a report is submitted in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6423, Washington, DC 20554.

20. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

h. Winning Bidders Must Disclose Terms of Agreements

21. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.

i. Additional Information Concerning Rule Prohibiting Certain Communications

22. A summary listing of documents issued by the Commission and the Bureaus addressing the application of

47 CFR 1.2105(c) may be found in Attachment E of the *Auctions 84 Procedures Public Notice.*

j. Antitrust Laws

23. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Due Diligence

24. Each applicant is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for AM broadcast facilities that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

25. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encouraged each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 84 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant was strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act, 47 CFR 1.1301–1.1319.

26. Each applicant should conduct its own research prior to Auction 84 in order to determine the existence of pending administrative or judicial proceedings that might affect its decision to participate in the auction. Each participant in Auction 84 should continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 84 Procedures Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

27. The Bureaus also reminded each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission, including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review, may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 84. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

28. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 84. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

29. Applicants may research the licensing database for the Media Bureau in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Commission's Consolidated Data Base System (CDBS).

30. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

iv. Use of Integrated Spectrum Auction System

31. Bidders will be able to participate in Auction 84 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

32. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes, 47 CFR 1.1301–1.1319. The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency

(through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

II. Short-Form Application Requirements

A. Updating Applicant's FCC Form 175 in ISAS—Remedial Filing Window Closes March 4, 2014

33. All applicants listed in Attachment A of the *Auction 84 Procedures Public Notice* previously filed an electronic Application to Participate in an FCC Auction (FCC Form 175) and sections of FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, including a separate Form 301 ''tech box'' for each proposed AM station, in either the filing window announced in the *AM Auction 84 Window Notice* or the *Supplemental Rockland County Window Notice.*

34. Each applicant should review carefully all of the information provided in the *Auction 84 Procedures Public Notice,* including the section regarding declarations as to former defaults and delinquencies. Attachment B of the *Auction 84 Procedures Public Notice* contains detailed instructions for Auction 84 applicants to review, verify and, if necessary, update their previously-filed short-form applications electronically using the FCC's web-based Auction System during the upcoming remedial filing window.

35. Each applicant seeking to participate in this auction also should review its previously-filed electronic Form 175, verify the completeness and accuracy of all information in its application, and ensure that it complies with the Commission's competitive bidding rules, as well as the procedures and deadlines set forth in the *Auction 84 Procedures Public Notice*. Consistent with the requirements of 47 CFR 1.65, if information contained in the application has changed or is no longer accurate, information required by the Commission's competitive bidding rules has been omitted or was incomplete, or the applicant believes that information or its compliance with auction requirements needs further description or explanation, an applicant may need to update, revise or supplement information it previously submitted.

36. If an applicant updates information in its short-form, it will need to fully complete the electronic form and certify the application in order to bring its short-form application into compliance with the current version of the FCC Form 175. For any change to be submitted and considered by the Commission, the applicant must complete the electronic Form 175 and submit its revised application by clicking on the SUBMIT button. Any such updates to short-form applications for Auction 84 must be resubmitted and confirmed prior to 6:00 p.m. ET on Thursday, March 4, 2014. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B of the *Auction 84 Procedures Public Notice*.

37. To the extent that an applicant may need to make changes to information previously submitted in an attachment, it may do so by uploading a new attachment describing any such changes. Applicants may view their previously-filed attachments, but may not delete any previously-filed attachment during the remedial filing window.

38. Each applicant must disclose its current ownership information as required by 47 CFR 1.2105, 1.2110, 1.2112 and 73.5002. Those rules generally require disclosure of the following ownership information: all real parties in interest in the applicant, including the identity and relationship of those persons or entities directly or indirectly owning or controlling the applicant; name, address, and citizenship of any party directly or indirectly holding a 10 percent or greater interest in the applicant, as well as the percentage of interest held in the applicant and whether the interest is an indirect or direct interest; if there is an indirect interest in the auction applicant of 10 percent or greater, the attachment must describe the relationship between the indirect interest holder and the auction applicant; whether the party directly or indirectly holding a 10 percent or greater interest in the applicant has voting or non-voting, common or preferred, stock and the specific amount of interest held; and any FCC-regulated entity or applicant for an FCC license, in which the auction applicant or any real party in interest in the auction applicant owns a 10 percent or greater interest. Such disclosure must include a description of the FCC-regulated entity's principal business and its relationship to the auction applicant.

39. Auction 84 applicants were required to disclose information on ownership of the applicant in an attachment to the Form 175. To the extent an applicant needs to make any changes to information contained in its previously-filed ownership attachment(s), it may do so by uploading a new attachment.

40. In certifying its application, each applicant certifies under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a Commission license. Submission of a Form 175 (and any amendments thereto) constitutes a representation by the certifying person that he or she is an authorized representative of the applicant, that he or she has authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

B. Minor Modifications to Short-Form Applications

41. An Auction 84 applicant is permitted to make only minor changes to its application. Under 47 CFR 1.2105(b), permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. If revised or updated information constitutes a ''major amendment'' as defined by 47 CFR 1.2105, such changes may result in disqualification of the applicant. After the initial application filing deadline, major amendments include a change of technical proposals, change of control of the applicant, or a claim of eligibility for a higher percentage of bidding credit.

C. Maintaining Current Information in Short-Form Applications

42. Each applicant is solely responsible for providing complete and accurate information in its Form 175. 47 CFR 1.65 and 1.2105(b) require an applicant in competitive bidding

proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. For example, if ownership changes result in the attribution of new media of mass communications that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. Events occurring after the initial application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately, and no later than five business days after the change occurs.

43. An applicant cannot use the FCC Auction System outside of the remedial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing contact information or the name of an authorized bidder).

44. If changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Any letter describing changes to an applicant's short-form application must be submitted by email to auction84@fcc.gov. The email summarizing the changes must include a subject or caption referring to Auction 84 and the name of the applicant, for example, ''Re: Changes to Auction 84 Short-Form Application of ABC Corp.''

D. Provisions Regarding Former and Current Defaulters

45. Current defaulters or delinquents are not eligible to participate in Auction 84, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a ''current defaulter'' or a ''current delinquent'' when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests (as defined by 47 CFR 1.2110), is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency. An applicant is considered a ''former defaulter'' or a ''former delinquent'' when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests (as defined by 47 CFR 1.2110), has defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

46. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by 47 CFR 1.2110, is not in default on any payment for a Commission construction permit or license (including down payments) and is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, or the affiliates of its controlling interests, has ever been in default on any Commission construction permit or license or has ever been delinquent on any non-tax debt owed to any Federal agency. Such applicants should confirm that this information remains accurate, and revise its response if the initial response no longer is accurate.

47. Applicants are encouraged to review guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the short-form application process as described in the *Auction 84 Procedures Public Notice*. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

48. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the ''red light rule,'' that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules ''are not affected'' by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

49. Applicants were reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current ''red light'' status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

50. Moreover, applicants in Auction 84 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

III. Pre-Auction Procedures

A. Online Auction Tutorial—Available February 19, 2014

51. An online tutorial will be available on the Auction 84 Web page by Wednesday, February 19, 2014. This online tutorial will provide information about pre-auction procedures, updating previously-filed short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction. Additional information about this tutorial is provided in the *Auction 84 Procedures Public Notice*.

B. Upfront Payments—Due April 7, 2014

52. Attachment A of the *Auction 84 Procedures Public Notice* specifies an upfront payment amount for each construction permit being offered in this auction. To be eligible to bid, an Auction 84 applicant must submit a timely and sufficient upfront payment by wire transfer, accompanied by an FCC Remittance Advice Form (FCC

Form 159), for at least one of the permits for which it is designated as an applicant on Attachment A to the *Auction 84 Procedures Public Notice,* and following the procedures and instructions set forth in Attachment C to the *Auction 84 Procedures Public Notice*. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 84 before 6:00 p.m. ET on April 7, 2014. The completed FCC Form 159 must be sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the *Auction 84 Procedures Public Notice* and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on April 7, 2014. Failure to deliver a sufficient upfront payment as instructed in the *Auction 84 Procedures Public Notice* by the deadline on April 7, 2014, will result in disqualification from participation in the auction.

i. Upfront Payments and Bidding Eligibility

53. The specific upfront payment amounts and bidding units for each construction permit are specified in Attachment A of the *Auction 84 Procedures Public Notice*. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment submitted determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

54. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the *Auction 84 Procedures Public Notice*. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits designated for that bidder. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

55. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 84 Procedures Public Notice,* the applicant will not be eligible to bid

C. Auction Registration

56. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the ''Integrated Spectrum Auction System (ISAS) Bidder's Guide,'' and the Auction Bidder Line phone number.

57. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, April 30, 2014, applicants should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements.

D. Remote Electronic Bidding

58. Only qualified bidders are permitted to bid. Qualified bidders are permitted to bid electronically via the Internet or by using the telephonic bidding option. All telephone calls are recorded. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens.

E. Mock Auction—May 2, 2014

59. All qualified bidders will be eligible to participate in a mock auction on Friday, May 2, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommended that all bidders participate in the mock auction.

IV. Auction

60. The first round of bidding for Auction 84 is scheduled to begin on Tuesday, May 6, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders.

A. Auction Structure

i. Simultaneous Multiple Round Auction

61. All construction permits in Auction 84 will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which

eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits for which that bidder is designated an applicant in Attachment A of the *Auction 84 Procedures Public Notice*. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

62. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the *Auction 84 Procedures Public Notice*. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

63. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

64. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.

65. A bidder is required to be active on 100 percent of its current eligibility during each round of Auction 84. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Activity Rule Waivers

66. The Bureaus decided to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

67. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

68. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the ''reduce eligibility'' function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

69. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the ''apply waiver'' function in the FCC Auction System) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

iv. Auction Stopping Rules

70. For Auction 84, the Bureaus decided to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

71. The Bureaus also adopted alternative versions of the simultaneous stopping rule for Auction 84: (1) The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2) the auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC-held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an ''FCC-held'' construction permit) would not keep the auction open under this modified stopping rule; (3) the auction would close using a modified version of the simultaneous stopping rule that combines (a) and (b); (4) the auction would end after a specified number of additional rounds. If the Bureaus invoke

this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close; and (5) the auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

72. The Bureaus will exercise these alternative versions only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these alternative versions the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retained the discretion to exercise any of these options with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

73. The Bureaus, by public notice or by announcement during the auction, may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasized that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

74. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

75. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

76. The Bureaus did not establish reserve prices, but adopted specific minimum opening bid amounts for the construction permits available in Auction 84. Each minimum opening bid amount is listed in Attachment A to the *Auction 84 Procedures Public Notice*.

iii. Bid Amounts

77. If a bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place a bid in each round on a given construction permit in any of up to nine different pre-defined amounts. The FCC Auction System interface will list nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the construction permit.

78. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid percentage will be 10 percent higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage of 10 percent. For example, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

79. The Bureaus will begin the auction with a bid increment percentage of 5 percent. Thus, the eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage of 5 percent. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage of 5 percent, rounded. For example, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureaus will round the results of these calculations using the standard rounding procedures for auctions.

80. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

81. At the end of each bidding round, a ''provisionally winning bid'' will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders were reminded that provisionally winning bids count toward activity for purposes of the activity rule.

82. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids). The FCC

Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

83. An applicant is not obligated to bid on all permits for which it is eligible. An Auction 84 applicant also must have sufficient bidding eligibility to place a bid on that particular construction permit.

84. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 84. Telephonic bid assistants are required to use a script when entering bids placed by telephone. The length of a call to place a telephonic bid may vary. Telephonic bidders were reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.

vi. Bid Removal and Bid Withdrawal

85. Each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the ''remove bids'' function in the FCC Auction System, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

86. The Bureaus decided to prohibit Auction 84 bidders from withdrawing any bids after the round in which the bids were placed has closed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 84, even if a bid was mistakenly or erroneously made.

vii. Auction Announcements and Round Results

87. The Commission will use auction announcements to report necessary information such as schedule changes.

88. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

V. Post-Auction Procedures

89. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and long-form applications.

A. Down Payments

90. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 84 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

91. The Bureaus declined one comments request to waive, modify, or refrain from implementing the down payment and final payment procedures of 47 CFR 1.2107(b) and 1.2109(a) for the reasons described in the *Auction 84 Procedures Public Notice*.

B. Final Payments

92. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application

93. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station) and required exhibits for each construction permit won through Auction 84. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. The Commission's rules also provide that a winning bidder in a commercial broadcast spectrum auction is required to submit an application filing fee with its post-auction long-form application.

D. Default and Disqualification

94. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 84 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The Bureaus set the percentage of the applicable bid to be assessed as an additional default payment for this auction at twenty percent of the applicable bid.

95. If a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2014–03203 Filed 2–12–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13–53; DA 14–109]

Tribal Mobility Fund Phase I Auction; Updated List of Eligible Areas for Auction 902

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission's Wireless Telecommunications and Wireline Competition Bureaus provide an updated list of eligible areas for Auction 902, as well as other updated information consistent with the revised list.

DATES: Auction 902 is scheduled to commence on February 25, 2014.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division,* Patricia Robbins (attorney) at (202) 418–0660. To request materials in accessible formats (Braille, large print, electronic

files, or audio format) for people with disabilities, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 902 Updated Eligible Areas Public Notice* released on February 3, 2014. The complete text of the *Auction 902 Updated Eligible Areas Public Notice,* including attachments and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 902 Updated Eligible Areas Public Notice,* including attachments and related Commission documents, also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 14–109 for the *Auction 902 Updated Eligible Areas Public Notice.* The *Auction 902 Updated Eligible Areas Public Notice,* including attachments and related documents is available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/902/*, or by using the search function for AU Docket No. 13–53 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/*.

1. The Wireless Telecommunications and Wireline Competition Bureaus (the Bureaus) release an updated list of eligible areas for the reverse auction that will award up to $50 million in one-time Tribal Mobility Fund Phase I support, Auction 902. The updated list reflects changes to the eligible areas for Auction 902 based on authorizations of support and default determinations from the initial auction of Mobility Fund Phase I support, Auction 901. Bidding in Auction 902 is scheduled to be held on Tuesday, February 25, 2014.

2. In the *Auction 902 Procedures Public Notice,* 78 FR 56875, September 16, 2013, the Bureaus identified areas eligible for the Tribal Mobility Fund Phase I support to be offered in Auction 902. At that time, the Bureaus released a file with information about the bidding areas for Auction 902 and a file containing detailed information about the census blocks of those bidding areas. In the list of bidding areas, the Bureaus identified with an asterisk the items with one or more census blocks that were the subject of a winning bid in Auction 901 for which the relevant long-form application remained pending. The Bureaus explained that if they determined prior to Auction 902 that any winning bids from Auction 901 covering blocks that would otherwise be eligible for Auction 902 could not be authorized, then such eligible blocks would be made available in the auction. Similarly, the Bureaus explained that they would exclude from Auction 902 any of the identified blocks for which they authorized Auction 901 support prior to the auction. The Bureaus subsequently released a public notice, 78 FR 61350, October 3, 2013, updating the list of eligible areas for Auction 902 to reflect Auction 901 authorizations of support and default determinations as of September 27, 2013.

3. The Bureaus announce the removal of certain census blocks for which support has been authorized for Auction 901 winning bids, as these blocks will not be available for support in Auction 902. The Bureaus note that in some cases, all of the census blocks for a particular bidding area have been removed, and thus that bidding area is no longer available in Auction 902. In other cases, only some of the census blocks for a particular bidding area have been removed, and thus that bidding area is still available in Auction 902 but includes fewer eligible populated census blocks.

4. Also, for those blocks on which Auction 901 winning bidders have defaulted, the Bureaus remove the asterisks in the list that previously identified the relevant census blocks as having received winning bids in Auction 901, and these areas will be eligible for bidding in Auction 902. There are no longer any asterisks in the list of eligible areas for Auction 902 because after these updates, the list is no longer subject to any pending Auction 901 long-form applications.

5. The updated list of bidding areas is released as Attachment A to the *Auction 902 Updated Eligible Areas Public Notice.* An updated version of the file containing detailed information about the census blocks of all of the bidding areas is available on the Auction 902 Web site at *http://wireless.fcc.gov/auctions/902/*. The interactive map of eligible areas has been updated to reflect these changes to the eligible areas for Auction 902. The link to the interactive map is available on the Auction 902 Web site at *http://wireless.fcc.gov/auctions/902/*, and the map itself is at *http://www.fcc.gov/maps/tribal-mobility-fund-phase-1-eligible-areas*. Geographic information system (GIS) data for the eligible areas is available as a downloadable shapefile on the Auction 902 Web site at *http://wireless.fcc.gov/auctions/902/*. The updated the census blocks file, the interactive map, and the GIS data include a notation indicating when they were updated.

6. Attachment B of the *Auction 902 Updated Eligible Areas Public Notice* lists the bidding areas that have been removed or modified since the prior list was released on September 27, 2013. These changes have been incorporated into each of the Auction 902 short-form applications (FCC Form 180), where applicable.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2014–03208 Filed 2–12–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (3064–0015)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on the renewal of an information collection, Interagency Bank Merger Application, 3064–0015, described below.

DATES: Comments must be submitted on or before April 14, 2014.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

1. Title: Interagency Bank Merger Application.

OMB Number: 3064–0015.

Form Number: FDIC 6220/01.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Reporting Burden:

Number of applications submitted by FDIC-supervised banks: 241.

Hours to process an application: × 23.5.

Total estimated annual burden hours: 5,664.

General Description of Collection: Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) requires an insured depository institution that wishes to merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution, to apply for the prior written approval of the responsible agency. The FDIC is the responsible agency if the acquiring, assuming, or resulting bank is to be a state nonmember insured bank or state savings association.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of February 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–03143 Filed 2–12–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request Re: Procedures for Monitoring Bank Secrecy Act Compliance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. As part of its continuing effort to reduce paperwork and respondent burden, the FDIC invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the PRA. On December 9, 2013 (78 FR 73862), the FDIC requested comment for 60 days on renewal of its information collection entitled *Procedures for Monitoring Bank Secrecy Act Compliance,* which is currently approved under OMB Control No. 3064–0087. No comments were received on the proposal to renew. The FDIC hereby gives notice of submission to OMB of its request to renew the collection.

DATES: Comments must be submitted on or before March 17, 2014.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

Title: Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064–0087.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and state savings associations.

Estimated Number of Respondents: 4316 (3,600 small institutions, 689 medium institutions, 27 large institutions).

Estimated Time per Response: 35 hours—small institutions, 250 hours—medium institutions, 450 hours—large institutions.

Total Estimated Annual Burden: 310,400 hours.

General Description of Collection: Respondents must establish and maintain procedures designed to monitor and ensure their compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated by the Department of Treasury at 31 CFR part 103. Respondents must also provide training for appropriate personnel.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 10th day of February 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–03163 Filed 2–12–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10347, Valley Community Bank, St. Charles, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Valley Community Bank, St. Charles, Illinois (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Valley Community Bank on February 25, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: February 10, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–03160 Filed 2–12–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2014–05]

Filing Dates for the Florida Special Elections in the 19th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Florida has scheduled special elections on April 22, 2014, and June 24, 2014, to fill the U.S. House of Representatives seat vacated by Representative Trey Radel.

Committees required to file reports in connection with the Special Primary Election on April 22, 2014, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and the Special General Election on June 24, 2014, shall file a 12-day Pre-Primary Report, 12-day Pre-General Report and a Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Florida Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on April 10, 2014; a 12-day Pre-General Report on June 12, 2014; and a Post-General Report on July 24, 2014. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on April 10, 2014. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2014 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Florida Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Florida Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Florida Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,300 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Committees Involved in Only the Special Primary (04/22/14) Must File:			
Pre-Primary	04/02/14	04/07/14	04/10/14
April Quarterly	—WAIVED —		
July Quarterly	06/30/14	07/15/14	07/15/14
Committees Involved in Both the Special Primary (04/22/14) and Special General (06/24/14) Must File:			
Pre-Primary	04/02/14	04/07/14	04/10/14

CALENDAR OF REPORTING DATES FOR FLORIDA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
April Quarterly	—WAIVED—		
Pre-General	06/04/14	06/09/14	06/12/14
July Quarterly	—WAIVED—		
Post-General	07/14/14	07/24/14	07/24/14
October Quarterly	09/30/14	10/15/14	10/15/14
Committees Involved in Only the Special General (06/24/14) Must File:			
Pre-General	06/04/14	06/09/14	06/12/14
July Quarterly	—WAIVED—		
Post-General	07/14/14	07/24/14	07/24/14
October Quarterly	09/30/14	10/15/14	10/15/14

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

Dated: February 6, 2014.

On behalf of the Commission.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–03131 Filed 2–12–14; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A Copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012245.

Title: Eastern Car Liner Ltd./Rickmers-Linie GmbH & Cie. KG Space Charter Agreement.

Parties: Eastern Car Liner Ltd. and Rickmers-Linie GmbH & Cie. KG

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to charter space to and from one another in the trade between ports in Japan on the one hand, and ports in the U.S. on the other hand.

By Order of the Federal Maritime Commission.

Dated: February 7, 2014.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–03085 Filed 2–12–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

A & E Logistics, Inc. (NVO & OFF), 3011 S. Poplar Avenue, Chicago, IL 60608, Officer: Alison Chan, President (QI), Application Type: Add NVO Service.

Amy Miwon Park dba AMP Shipping International (NVO), 3828 W. 226th Street, Suite #37, Torrance, CA 90505, Officer: Amy M. Park, Sole Proprietor (QI), Application Type: Business Structure Change To Amp Shipping International, LLC.

AZ Express Freight, Inc. (NVO), 6129 Fleetwood Lane, Chino Hills, CA 91709, Officer: Bin aka Ada Zhou, CEO (QI), Application Type: New NVO License.

Carolina Shipping Company, L.P. dba Cutlass Logistics Ltd. (OFF), 1064 Gardner Road, Suite 312, Charleston, SC 29407, Officers: Dennis J. Forsberg, Manager (QI), Thomas J. Springer, President, Application Type: Transfer to Biehl & Co. South Carolina LLC.

Concept Cargo Freight & Logistics Inc (NVO), 10925 NW 27th Street, Miami, FL 33172, Officers:, Milton A. Rocha, Director (QI), Tania M. Reis, Director, Application Type: Add Trade Name Serpa Group & QI Change.

Dug Cargo LLC (NVO & OFF), 3409B NW 72nd Avenue, Miami, FL 33122, Officers: David Valencia, Manager (QI), Teodoro Hoffmann, Managing Member, Application Type: New NVO & OFF License.

Expert Log LLC (NVO & OFF), 10540 NW 29th Terrace, Doral, FL 33172, Officers: Annia Ortiz, Manager (QI), Maria E. Souza, Member, Application Type: QI Change.

GB America, LLC (NVO), 19100 Von Karman Avenue, Suite 370, Irvine, CA 92612, Officer: Jo Ning Huang, Member (QI), Application Type: New NVO Service.

Global USA Inc. (NVO & OFF), 140 E. Tujunga Avenue, Burbank, CA 91502, Officers: Mikayel Hayrapetyan, CFO (QI), Khachatur Papyan, President, Application Type: New NVO & OFF License.

Neptune Logistics, Inc. (NVO), 11213 Suffolk Drive, Hagerstown, MD 21742, Officers: Fateh B. Harisinghani, Treasurer (QI), Sangeeta Khalsa,

President, Application Type: New NVO License.

Proline Shipping Houston, Inc. dba Proline Logistics (NVO), 9102 Westpark Drive, Houston, TX 77063, Officers: Susan Wong, Treasurer (QI), Richard Tsai, President, Application Type: New NVO License.

Secure Transportation and Relocation International, Inc. dba Star, International Movers (OFF), 21598 Atlantic Blvd., Suite 100, Sterling, VA 20166, Officers:, James Re, Member (QI), Michael Keller, Member, Application Type: Transfer to Star International Movers, LLC.

SNS Global Logistic Inc. (NVO), 182–30 150 Road, Suite 106, Springfield Gardens, NY 11413, Officers: Dong Hoon Yum, Secretary (QI), Seungjoon Oh, President, Application Type: New NVO License.

By the Commission.

Dated: February 7, 2014.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–03099 Filed 2–12–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR part 238) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2014.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *John W. Langdale, Jr. Trust, Margaret E. Langdale Trust, and Lee L. Mikuta Trust,* all of Valdosta, Georgia, to become savings and loan holding companies by acquiring Lowndes Bancshares, Inc., and thereby indirectly acquire Commercial Banking Company, both in Valdosta, Georgia.

Board of Governors of the Federal Reserve System, February 10, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–03159 Filed 2–12–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 28, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Tommy J. Lowery, Jeanice F. Lowry, Janice K. Slack, and Michael H. Slack,* all of Oxford, Kansas, as members of the Catlin family group, to retain voting shares of Emerald Bank, Burden, Kansas.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *John Jung Hun Chang, Duck Hee Chang, Wellwish Investments LLC, Ellis Eunrok Chang, all of Garden Grove, California, and Ellen Eunmi Chang,* Bellevue, Washington, to retain voting shares of U & I Financial Corp., and thereby indirectly retain voting shares of UniBank, both in Lynnwood, Washington.

Board of Governors of the Federal Reserve System, February 10, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–03158 Filed 2–12–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine; Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 3:15 p.m. on Tuesday, February 18, 2014.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Street NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on February 17, 2014. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and

birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

Matters To Be Considered

Discussion Agenda

1. Final Rule Establishing Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations with more than $50 Billion in Total Consolidated Assets.

Notes: 1. The staff memo to the Board will be made available to the public on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: February 11, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–03254 Filed 2–11–14; 11:15 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that a meeting of the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will take place via webinar. This webinar meeting will be open to the public. Registration will not be required for public participants. Public comment has been scheduled.

DATES: The one-day webinar meeting will be held on Tuesday, March 11, 2014, from 12:00 p.m. until 5:00 p.m. (ET)

ADDRESSES: The meeting will be conducted by webinar.

FOR FURTHER INFORMATION CONTACT: Nancy C. Lee, M.D., Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, Office on Women's Health, 200 Independence Avenue SW., Room 712E, Washington, DC 20201. Phone: 202–690–7650; Fax: 202–401–4005. *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: The CFSAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The purpose of the CFSAC is to provide advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues related to myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS). The issues can include factors affecting access and care for persons with ME/CFS; the science and definition of ME/CFS; and broader public health, clinical, research and educational issues related to ME/CFS.

The agenda for this meeting and instructions to access the webinar will be posted on the CFSAC Web site *www.hhs.gov/advocomcfsac*. The webinar will use Adobe Acrobat Connect Pro Meeting. Please test your computer prior to participation at *http://admin.adobeconnect.com/common/help/en/support/meeting_test.htm.* Registration will not be required for this webinar. Oral public comment has already been scheduled. Because the first day of the December 10, 2013 webinar was cancelled due to weather, public comment that was scheduled for that day will be heard at this webinar.

Dated: February 7, 2014.

Nancy C. Lee,

Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, U.S. Department of Health and Human Services.

[FR Doc. 2014–03125 Filed 2–12–14; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

HIT Standards Committee and HIT Policy Committee; Call for Nominations

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Call for Nominations.

Summary: The Office of the National Coordinator for Health Information Technology (ONC) is seeking nominations to the Health Information Technology Standards Committee (HITSC) and Health Information Technology Policy Committee (HITPC).

Name of Committees: HIT Standards Committee and HIT Policy Committee.

General Function of the Committees: The HITSC is charged to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

The HITPC is charged to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: Nominations must be received by 12:00 p.m. on Monday, March 3, 2014.

Contact Person: Michelle Consolazio, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20024, phone: 781–710–0786, email: *michelle.consolazio@hhs.gov.*

Background: The HIT Standards Committee was established under the American Recovery and Reinvestment Act 2009 (ARRA) (Pub. L. 111–5),

section 13101, new Section 3003. Members of the HIT Standards Committee are appointed by the Secretary, HHS and shall at least reflect providers, ancillary healthcare workers, consumers, purchasers, health plans, technology vendors, researchers, relevant Federal agencies, and individuals with technical expertise on health care quality, privacy and security, and on the electronic exchange and use of health information. Nominees of the HITSC should have experience promoting the meaningful use of health information technology and be knowledgeable in areas such as: small innovative health care providers, providers participating in payment reform initiatives, accountable care organizations, pharmacists, behavioral health professionals, home health care, purchaser or employer representatives, patient safety, health information technology security, big data, consumer e-health, personal health records, and mobile health applications.

The HIT Policy Committee was established under the American Recovery and Reinvestment Act 2009 (ARRA) (Pub. L. 111–5), section 13101, new Section 3002. Members of the HIT Policy Committee are appointed in the following manner: 3 members appointed by the Secretary, HHS; 4 members appointed by Congress; 13 members appointed by the Comptroller General of the United States; and other federal members appointed by the President. Nominations are being accepted for one of the three members appointed by the Secretary of HHS. Nominees of the HITPC should have experience promoting the meaningful use of health information technology and be knowledgeable in privacy and security issues related to health information.

Members will be selected in order to achieve a balanced representation of viewpoints, areas of experience, subject matter expertise, and representation of the health care system. Terms will be three (3) years from the appointment date to either the HITSC or HITPC. Members on both Committees serve without pay. However, members will be provided per diem and travel costs for Committee services.

The HITSC will be seeking nominations for the following areas of expertise:

- Consumer/Patient Representative
- Technical Expertise, Electronic Exchange
- Technical Expertise, Quality

The HITPC will be seeking nominations for the following area of expertise:

- Public Health Representative

Current HITSC and HITPC members in their first term of service with an expiring term are allowed to reapply for a second term.

For more information about the HITSC please visit: *http://www.healthit.gov/FACAS/health-it-standards-committee.* For more information about the HITPC please visit: *http://www.healthit.gov/FACAS/health-it-policy-committee.*

Submitting Nominations: Nominations should be submitted electronically through the application database that will be linked to the FACA application page on the HealthIT.gov Web site at: *http://www.healthit.gov/facas/faca-workgroup-membership-application.* All nominations must be compiled and submitted in one complete nomination package. A nomination package must include: A short bio, a current CV including contact information and memberships with professional organizations/advisory committees, and two letters of support.

Dated: February 5, 2014.

Michelle Consolazio,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2014–03126 Filed 2–12–14; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day 14–14IZ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506©(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection project, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Ready CDC—New—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under the Authority of Section 301 of the Public Health Service Act (42 U.S.C. 241), the Centers for Disease Control and Prevention is responsible for administering the Ready CDC program. Ready CDC is an educational intervention designed to increase awareness about personal and family preparedness and increase the number individuals who are prepared for a disaster in their community. As a response Agency, CDC is responsible for responding to national and international disasters. One component of ensuring staff are prepared to respond to disasters is ensuring that the workforce has their personal and family preparedness plans in place. Research has shown that individuals are more likely to respond to an event if they perceive that their family is prepared to function in their absence during an emergency.

The Ready CDC educational intervention consists of a Personal Preparedness Workshop as well as three targeted communications to reinforce concepts discussed during the workshop. The audience for this intervention will be CDC federal employees with a responder role (Phase I), other samples of the CDC workforce including both federal staff and contractors (Phase II), and audiences outside of the CDC, possibly including other external governmental and non-governmental organizations (Phase III).

CDC requests Office of Management and Budget (OMB) approval for three years to collect information that will measure the initial preparedness of participants, satisfaction with the Personal Preparedness Workshops, and the change in individual knowledge and behaviors related to personal and family preparedness.

CDC has developed three data collection instruments: (1) Pre-Workshop Survey; (2) Ready CDC Workshop Evaluation; and (3) Follow-Up Survey. Collectively, these

instruments are needed to gather, process, aggregate, evaluate, and disseminate information describing the program's processes and outcomes. The information will be used by CDC to document progress toward meeting established program goals and objectives, to evaluate outcomes generated by the Ready CDC Personal Preparedness Workshops and to respond to data inquiries made by other agencies of the federal government.

Survey instrument questions will gather perceptions about personal and regional preparedness from the perspective of the participant. Each participant will be surveyed three times, once before and twice after their participation in the Personal Preparedness Workshop.

It is estimated that there will be a total of 600 respondents/year with an estimated time for data collection of 20 minutes each on the pre-workshop survey, 5 minutes each on the Ready CDC Workshop Evaluation, and 10 minutes each on the Follow Up Survey.

Instruments will be administered electronically (by including a link to the survey Web site with the email invitation) with an option for paper copy administration. The Follow Up Survey will be used to document changes in the categories of questions dealing with preparedness from the initial pre-workshop survey.

The estimated total time for data collection is 35 minutes, resulting in an annualized estimated burden of 350 hours.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Federal Employee, Contractor, or other external governmental and non-governmental organizations.	Pre-Workshop Survey ..	600	1	20/60	200
Federal Employee, Contractor, or other external governmental and non-governmental organizations.	Ready CDC Workshop evaluation.	600	1	5/60	50
Federal Employee, Contractor, or other external governmental and non-governmental organizations.	Follow Up Survey	600	1	10/60	100
Total	.....	.....	.....	.....	350

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–03177 Filed 2–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–13ZC]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Case Studies to Explore Interventions that Support, Build, and Provide Legacy Awareness for Young Breast Cancer Survivors—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Young breast cancer survivors (YBCS, defined as women diagnosed with breast cancer under 45 years old) may have a more difficult time coping with breast cancer treatment and aftercare when compared to older breast cancer survivors. As a result of the Young Women's Breast Health Education and Awareness Requires Learning Young (EARLY) Act, CDC established Funding Opportunity Announcement, DP11–1111, *Developing Support and Educational Awareness for Young (< 45 years of age) Breast Cancer Survivors in the United States.* Subsequently, CDC awarded a three-year cooperative agreement to seven organizations that demonstrated a capacity to (1) reach YBCS, health care providers, and caregivers/families, (2) implement interventions that seek to provide support services, and (3) develop educational communication and awareness resources to support YBCS.

Other establishments within the U.S., such as local and national not-for-profit organizations and academic institutions, implement similar YBCS-focused interventions without funding from CDC's DP11–1111 cooperative agreement. Although these entities are not funded through CDC, they plan, develop, and employ similar tools, strategies, and interventions to reach or benefit these targeted young cancer-survivor populations.

CDC proposes to conduct exploratory case studies of organizations that provide support services and/or educational resources to YBCS, health care providers, and/or caregivers/families. Each selected organization will serve as a unique case and the unit of analysis. Information will be collected from up to 12 organizations: seven case studies will be conducted with organizations that receive funding through CDC's DP11–1111 cooperative agreement, and up to five case studies will be conducted with other organizations that are implementing similar YBCS-focused activities and interventions but do not receive funding under DP11–1111.

Case studies are intended to serve as an exploration of implementation activities, as well as to provide the context for implementation. Information

will be collected during a single site visit to each selected organization to conduct on-site observations and in-depth interviews (IDI) with each organization's key informants, such as Principal Investigators, Program Managers, Program Staff, and Program Partners. IDIs will last 1–2 hours each. Case study findings will help CDC to identify areas in which CDC can build upon existing and emerging efforts to provide support services and educational resources to YBCS, highlight barriers and facilitating factors to implementing interventions targeting YBCS, determine the added value of providing the DP11–1111 cooperative agreement (e.g., funding, technical assistance) to various entities, identify lessons learned that can be applied to future implementation of YBCS interventions, and better understand the sustainability of YBCS interventions following/in the absence of CDC funding.

Case study selection is based on a purposeful selection of CDC-funded and non-CDC funded organizations that support YBCS populations through educational or service programs. Potential organizations for this project may be funded through state, local, or Tribal government, or the private sector. Information will be collected approximately two years after initiation of CDC's cooperative agreement. OMB approval is requested for one year.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 168.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
Private Sector Organizations	Worksheet for Identifying Site Visit Interviews	7	1	1
	Worksheet for Scheduling Site Visit Interviews	7	1	2
	IDI Guide for Program Directors/Principal Investigators.	7	1	2
	IDI Guide for Program Managers	7	1	1
	IDI Guide for Program Staff Members	35	1	1
	IDI Guide for Program Partners	21	1	1
State, Local, and Tribal Government Organizations.	Worksheet for Identifying Site Visit Interviews.	5	1	1
	Worksheet for Scheduling Site Visit Interviews	5	1	2
	IDI Guide for Program Directors/Principal Investigators.	5	1	2
	IDI Guide for Program Managers	5	1	1
	IDI Guide for Program Staff Members	25	1	1
	IDI Guide for Program Partners	15	1	1

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–03176 Filed 2–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Gastroenterology and Urology Devices Panel of the Medical Devices 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: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 20, 2014, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's telephone number is 301–948–8900.

Contact Person: Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, *Avena.Russell@fda.hhs.gov,* 301–796–3805, 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: On March 20, 2014, the committee will discuss, make recommendations, and vote on information regarding the humanitarian device exemption (HDE) application for the XVIVO Perfusion System (XPS™) sponsored by XVIVO Perfusion, Inc. The proposed Indication for Use for the XVIVO Perfusion System, as stated in the HDE, is as follows:

The XPS™ is intended to be used with STEEN Solution for flushing and temporary continuous normothermic machine perfusion of initially unacceptable excised donor lungs during which time the function of the lungs can be reassessed for transplantation.

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 March 13, 2014. 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 March 5, 2014. 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 March 6, 2014.

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 AnnMarie Williams at *Annmarie.Williams@fda.hhs.gov* or 301–796–5966 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: February 7, 2014.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–03139 Filed 2–12–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

National Institutes of Health

Proposed Collection; Comment Request; NIH Neurobiobank Tissue Access Request

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Mental Health (NIMH), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Keisha Shropshire, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Rockville Pike, Bethesda, MD 20892, or call 301–443–4335 or Email your request, including your address to: *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments received within 60 days of the date of this publication will receive fullest consideration.

Proposed Collection: National Institute of Health Neurobiobank Tissue Access Request–0925–New. National Institute of Mental Health (NIMH), National Institute of Health (NIH).

Need and Use of Information Collection: The NIH Neurobiobank Tissue Access Request form is necessary for ''Recipient'' Principal Investigators and their organization or corporations with approved assurance from the DHHS Office of Human Research Protections to access tissue or biospecimens from the National Neurobiobank for research purposes. The primary use of this information is to document, track, monitor, and evaluate the appropriate use of the Neurobiobank tissue and biospecimen resources, as well as to notify interested recipients of updates, corrections or other changes to the system.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 63.

ESTIMATES ANNUAL BURDEN HOURS

Form	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
Neurobiobank Tissue Access Request	50	1	15/60	13
Pre-Mortem Consent and Medical History	50	1	1	50
Total				63

Dated: January 29, 2014.

Keisha Shropshire,

Project Clearance Officer, NIMH, NIH.

[FR Doc. 2014–03204 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Tumor Infiltrating Lymphocytes From Human Papillomavirus-Positive Tumors for the Treatment of Cancer

Description of Technology: Human papillomaviruses (HPV) cause anogenital and oropharyngeal cancers, and these malignancies express viral oncoproteins that can be recognized by T cells. When HPV-associated cancers spread they are incurable and difficult to palliate with existing treatments.

Tumor infiltrating lymphocytes (TIL) have been used successfully to treat advanced stage malignant melanoma, however their use has been primarily limited to this disease. This technology describes a novel TIL therapy for treating HPV-associated cancers. The NIH inventors have found TIL can be grown from HPV positive tumors at grade and scale suitable for clinical use and that they can recognize the HPV oncoproteins that drive transformation and survival of cancer cells. The inventors have initiated a clinical trial for the treatment of advanced HPV positive cancers that are refractory to standard chemotherapy using HPV–TIL. Early results of the clinical trial suggest that HPV–TIL has activity in chemotherapy-refractory advanced disease for which no standard treatment options are available.

Potential Commercial Applications: HPV–TIL therapy is a novel treatment approach that may mediate long-lasting tumor regression from a single dose of cells.

Competitive Advantages: Early clinical results suggest that HPV–TIL has activity in chemotherapy-refractory advanced disease for which no standard treatment options are available.

Development Stage: In vitro data available (human)

Inventors: Christian Hinrichs and Steven A. Rosenberg (NCI)

Publications:

1. Piersma SJ, *et al.* Human papilloma virus specific T cells infiltrating cervical cancer and draining lymph nodes show remarkably frequent use of HLA–DQ and –DP as a restriction element. Int J Cancer 2008 Feb 1;122(3):486–94. [PMID 17955486]
2. de Vos van Steenwijk PJ, *et al.* An unexpectedly large polyclonal repertoire of HPV-specific T cells is poised for action in patients with cervical cancer. Cancer Res. 2010 Apr 1;70(7):2707–17. [PMID 20233872]

Intellectual Property: HHS Reference No. E–494–2013/0—US Provisional Application No. 61/846,161 filed 15 July 2013

Related Technology: HHS Reference No. E–495–2013/0—US Provisional Application No. 61/846,167 filed 15 July 2013

Licensing Contact: Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov*

Improved Culture Medium for Stem Cell Maintenance and Differentiation

Description of Technology: A novel low protein culture medium with defined chemical components that allows pluripotent stem cell maintenance and differentiation is disclosed. The present technology also provides for production of high quality cardiac cells from human embryonic and induced pluripotent stem cells in chemically defined medium conditions. Human pluripotent stem cells, including human embryonic stem cells and human induced pluripotent stem cells, can be propagated indefinitely while still retaining the capacity to differentiate into all somatic cell types, and are a potentially inexhaustible supply of human cells. The capacity to sustain survival at high density is critical for maintaining consistent stem cell cultures and avoiding the development of abnormal stem cells, and for proper stem cell differentiation. Also, it is essential to have high quality stem cells for all personalized cellular therapies. NIH investigators developed a low protein medium that supports the proliferation and differentiation of stem cells comprising one or more of a volume expander, a lipid mix and a growth factor modulator. Also, the investigators have used the new medium to produce high quality cardiac cells from human embryonic and induced pluripotent stem cells.

Potential Commercial Applications:

- Improved defined medium to grow, maintain and differentiate stem cells.
- This medium can be used to develop culture systems that could be used to generate specific cell types for potential clinical applications.

Competitive Advantages: This new medium could significantly improve progenitor cell derivation from embryonic stem cells and induced pluripotent stem cells and could have great usage in future translational applications.

Development Stage:

- Early-stage
- In vitro data available
- In vivo data available (animal)

Inventors: Guokai Chen and Yongshun Lin (NHLBI)

Intellectual Property: HHS Reference No. E–089–2013/0—US Provisional Application No. 61/879,840 filed 19 September 2013

Licensing Contact: Sury Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov*

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Stem Cell Culture Medium. For collaboration opportunities, please contact Peg Koelble at *koelblep@nhlbi.nih.gov.*

Dated: February 10, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–03083 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 10–11, 2014.

Time: March 10, 2014, 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3139, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Time: March 11, 2014, 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3139, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Room 3139, Bethesda, MD 20892, (301) 451–2592, *pricebd@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: February 6, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03112 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Biotechnology Instrumentation 2.

Date: March 6, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Peer Review of SCORE Grant Applications.

Date: March 13, 2014.

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: Shinako Takada, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: February 7, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03107 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Biotechnology Instrumentation 1.

Date: March 5, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Clinical Trials on Sepsis.

Date: March 5, 2014.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96,

Special Minority Initiatives, National Institutes of Health, HHS).

Dated: February 7, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03110 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neural Oxidative Metabolism and Death Study Section, February 20, 2014, 08:00 a.m. to February 21, 2014, 12:00 p.m., Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA, 94108 which was published in the Federal Register on January 23, 2014, 79 FR 3836–3838.

The meeting will be held at The Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109. The meeting date and time remain the same. The meeting is closed to the public.

Dated: February 7, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03106 Filed 2–12–14; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.),notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: February 14, 2014.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 7, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03108 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SBIR Phase I contract review (Topic 329&330).

Date: March 3, 2014.

Time: 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W534, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Ivan Ding, MD, Program & Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–8328, 240–276–6444, *dingi@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Clinical Studies.

Date: March 5, 2014.

Time: 2:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Delia Tang, MD Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892–9750, 240–276–6456, *tangd@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Bridging Cancer Mechanisms to Population Levels.

Date: March 10, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W264, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Ellen K Schwartz, EDD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–6384, *schwarel@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Biology 2.

Date: March 24–25, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W106, Rockville, MD 20892–2750, 240–276–6342, *choe@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus Cancer Genetics.

Date: March 27, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional

information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: February 7, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03111 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Clinical Trials SEP.

Date: January 9, 2014.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: February 6, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03113 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: February 21, 2014.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: NCI Update; Barriers to Drug Development in Pediatric Cancer Research; Advocate and Organizational Engagement.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Amy Bulman, Executive Secretary, DCLG, Office of Advocacy Relations, National Cancer Institute, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, 301–496–9723.

This notice is being submitted less than 15 days due to scheduling constraints.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: February 7, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–03109 Filed 2–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0065]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, National Capital Region Secure Delivery Technology Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), Science & Technology Directorate (S&T) invites the general public to comment on data collection forms for the National Capital Region (NCR) Secure Delivery Technology program. This is a new Paper Reduction Act collection without an OMB control number. Secure Delivery Technology is responsible for improving the efficiency and effectiveness of deliveries to General Services Administration (GSA) facilities in the NCR.

Information collected by Federal Protective Service (FPS) personnel to ensure secured deliveries in the NCR includes the delivery driver's name and license number. The information collected is used by FPS personnel to verify the identity of the driver at the delivery central screening facility and final destination locations, along with providing an auditable trail for post-delivery analysis should an event occur that requires forensics.

DHS invites interested persons to comment on the ''National Capital Region Secure Delivery Technology Driver Log'' form and instructions (hereinafter ''Forms Package'') for the S&T NCR Secure Delivery Technology. Interested persons may receive a copy of the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by

the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until April 14, 2014.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2013–0065, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Jonathan.Mcentee@hq.dhs.gov.* Please include docket number DHS–2013–0065 in the subject line of the message.
- *Mail:* Science and Technology Directorate, ATTN: National Capital Region Secure Delivery Technology program, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Jonathan Mcentee, *Jonathan.Mcentee@hq.dhs.gov,* 202–254–6139. (Not a toll free number).

SUPPLEMENTARY INFORMATION: The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Paper Reduction Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* This is a new collection.

(2) *Title of the Form/Collection:* Science and Technology, National Capital Region Secure Delivery Technology program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* [No form name]; Department of Homeland Security, Science & Technology Directorate, Borders and Maritime Security Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Drivers of deliveries to GSA facilities in the NCR are required to provide their names and driver's license to FPS personnel to bind the individual driver to the package being delivered, and any other data associated with the delivery for security purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* FPS contracts approximately ten (10) Protective Security Officers who are monitored by one (1) FTE to capture the driver and delivery information.

b. *An estimate of the time for an average respondent to respond:* FPS personnel spend approximately five (5) minutes per delivery to capture the requisite information.

c. *An estimate of the total public burden (in hours) associated with the collection:* There is no burden on the public for the information capture—FPS personnel capture the data in parallel with other FPS personnel screening the delivery truck. It is estimated six-thousand (6,000) staff hours will be saved by automating the management of the information being captured.

Dated: January 7, 2014.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2014–03172 Filed 2–12–14; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1353]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 14, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1353, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required

by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Hendry County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Clewiston	Community Development Department, 121 Central Avenue, Clewiston, FL 33440.
City of La Belle	City Hall, 481 West Hickpochee Avenue, LaBelle, FL 33935.
Unincorporated Areas of Hendry County	Hendry County Building Department, 640 South Main Street, LaBelle, FL 33935.
Forrest County, Mississippi, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Hattiesburg	Building and Inspections Department, City Hall, 200 Forrest Street, Hattiesburg, MS 39401.
Unincorporated Areas of Forrest County	Forrest County Board of Supervisor's Office, County Courthouse, 629 Main Street, Hattiesburg, MS 39401.
McKenzie County, North Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Alexander	112 Manning Avenue West, Alexander, ND 58831.
City of Watford	213 2nd Street NE., Watford City, ND.
McKenzie County	201 NW 5th Street, Watford City, ND 58854–0543.
Natrona County, Wyoming, and Incorporated Areas	
Maps Available for Inspection Online at: *www.fema.gov/preliminaryfloodhazarddata*	
City of Casper	City Hall, 200 North David Street, Casper, WY 82601.
Town of Evansville	Town Hall, 235 Curtis Street, Evansville, WY 82635.
Town of Mills	Town Hall, 704 4th Street, Mills, WY 82644.
Unincorporated Areas of Natrona County	Natrona County Board of Commissioners, 200 North Center Street, Casper, WY 82601.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 31, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–03154 Filed 2–12–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Geospatial Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Renewal of National Geospatial Advisory Committee.

SUMMARY: This notice is published in accordance with Section 9(a) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior has renewed the National Geospatial Advisory Committee. The Committee will provide advice and recommendations to the Federal Geographic Data Committee (FGDC), through the FGDC Chair (the Secretary

of the Interior or designee), related to management of Federal geospatial programs, development of the National Spatial Data Infrastructure (NSDI), and implementation of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. The Committee will review and comment upon geospatial policy and management issues and will provide a forum to convey views representative of non-Federal partners in the geospatial community.

FOR FURTHER INFORMATION CONTACT: John Mahoney, USGS (phone: 206–220–4621, email: *jmahoney@usgs.gov*).

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). The Committee will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior through the Chair of the FGDC Steering Committee and will function solely as an advisory body. The Committee will provide recommendations and advice to the Department and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The Secretary of the Interior will appoint Committee members. The Committee will be composed of up to 30 representatives, who will be selected to generally achieve a balanced representation of the viewpoints of the various stakeholders involved in national geospatial activities and the development of the NSDI.

The Committee is expected to meet 3–4 times per year. Committee members will serve without compensation. Travel and per diem costs will be provided for Committee members by the U.S. Geological Survey (USGS). The USGS will provide necessary support services to the Committee. Committee meetings will be open to the public. Notice of Committee meetings will be published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

In accordance with FACA, we will file a copy of the Committee's charter with the Committee Management Secretariat, General Services Administration; Committee on Energy and Natural Resources, United States Senate; Committee on Natural Resources, United States House of Representatives; and the Library of Congress.

The Certification for renewal is published below.

Certification

I hereby certify that the National Geospatial Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by Office of Management and Budget (OMB) Circular A–16 (Revised), ''*Coordination of Geographic Information and Related Spatial Data Activities.*'' The Committee will assist the Department of the Interior by providing advice and recommendations related to the management of Federal geospatial programs and the development of the National Spatial Data Infrastructure.

Dated: January 14, 2014.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2014–03195 Filed 2–12–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–KNRI–14233; PPMWMWROW2/PPMPSAS1Y.YP0000]

Notice of Intent To Prepare an Archeological Resources Management Plan/Environmental Impact Statement for Knife River Indian Villages National Historic Site, North Dakota

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces its intent to prepare an Archeological Resources Management Plan/Environmental Impact Statement (Plan/EIS) for Knife River Indian Villages National Historic Site, North Dakota.

DATES: This notice initiates the public scoping process for the Plan/EIS. Notices of any public scoping meetings regarding this Plan/EIS, including specific dates, times, and locations, will be announced in the local media; in project newsletters; on the project Web site at *http://parkplanning.nps.gov/KNRI*; or may be obtained directly by contacting the Superintendent at the address below.

ADDRESSES: Superintendent, Knife River Indian Villages National Historic Site, P.O. Box 9, Stanton, ND 58571–0009. You are encouraged to provide comments or requests to be added to the mailing list electronically through the project Web site at *http://parkplanning.nps.gov/KNRI* or by contacting the Superintendent.

FOR FURTHER INFORMATION CONTACT: Superintendent Wendy Ross, Knife River Indian Villages National Historic Site, at the address above, or by telephone at (701) 745–3300.

SUPPLEMENTARY INFORMATION: The NPS is announcing its intent to prepare an archeological resources management plan and environmental impact statement (Plan/EIS) for comprehensive archeological resource protection from Knife River bank erosion, infrastructure placement, vegetation encroachment, and burrowing mammal activity at Knife River Indian Villages National Historic Site.

The project objective is to support the NPS mission to ''conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' To this end, the project will define desired conditions and management actions that conform to *The Secretary of the Interior's Standards for Treatment of Historic Properties,* while providing a suite of various reasonable alternatives capable of achieving these goals.

Past planning and emergency efforts have focused on streambank protection; however, this plan will encompass all threats to archeological resources and all reasonable and feasible alternatives to stop or reduce resource impacts. The plan will explore some of the following during the course of alternative development: Stream bank control, erosion control, pest abatement, vegetation control, archeological excavation and documentation, and interpretation of archeological resources. A full range of reasonable alternatives for the management of archeological resources will be developed through this planning process and will include, at minimum, a no-action and a preferred alternative. The potential environmental effects of each alternative will be evaluated.

The purpose of the formal public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the Plan/EIS. All interested persons, organizations, agencies, and Tribes are encouraged to submit comments and suggestions on issues and concerns that should be addressed in the Plan/EIS, and the range of appropriate alternatives that should be examined.

The NPS will use the public involvement process established by the National Environmental Policy Act to

satisfy the requirements of Section 106 of the National Historic Preservation Act, as provided for in 36 CFR 800.2(d)(3). Federal, State, and local agencies that may be interested or affected by decisions related to this project are invited to participate in the scoping process and, if eligible, may request to participate as a cooperating agency.

We welcome your comments and assistance in our efforts, but before including your address, telephone number, email address, or other personal identifying information in a 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, or organizations or businesses, available for public inspection in their entirety.

Dated: September 27, 2013.

Patricia S. Trap,

Acting Regional Director, Midwest Region.

[FR Doc. 2014–03185 Filed 2–12–14; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[14XR0680A1 RX.R0336900.0019100 RR01115000]

Yakima River Basin Conservation Advisory Group; Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, established by the Secretary of the Interior, will hold a public meeting. The Yakima River Basin Conservation Advisory Group is a Federal advisory committee that provides technical advice and counsel to the Secretary of the Interior and Washington State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: The meeting will be held on Wednesday, March 5, 2014, from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Bureau of Reclamation, Yakima Field Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Timothy McCoy, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington 98901; (509) 575–5848, extension 209; facsimile (509) 454–5612; email at *tmccoy@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Yakima River Basin Conservation Advisory Group (CAG) provides recommendations to the Secretary and the State on the structure and implementation of the basin conservation program; with that the group provides recommendations on rules, regulations, and administration to facilitate the voluntary sale and lease of water. The CAG provides oversight to the Yakima River Basin Conservation Plan, and provides an annual review of the implementation of the Water Conservation Program, including the applicable water conservation guidelines of the Secretary used by participating entities in preparing their individual water conservation plan.

Agenda: The primary purpose of the meeting is to update CAG members of the status of ongoing and future projects being funded with Yakima River Basin Water Enhancement Project funds. The CAG will also review the options of using the acquired habitat lands to mitigate the impacts that occur from the planned conservation measures and will develop recommendations at the completion of their review. This meeting is open to the public.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 16, 2014.

Timothy McCoy,

Program Manager, Pacific Northwest Region.

[FR Doc. 2014–03247 Filed 2–12–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–823]

Certain Kinesiotherapy Devices and Components Thereof (Advisory Opinion Proceeding) Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 10, 2012, based on a complaint filed by Standard Innovation Corporation of Ottawa, ON, Canada and Standard Innovation (US) Corp. of Wilmington, Delaware (collectively, ''Standard Innovation''). 77 FR 1504–05 (Jan. 10, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of infringement of certain claims of United States Patent Nos. 7,931,605 (''the '605 patent'') and D605,779 (''the '779 patent''). The complaint named twenty-one business entities as respondents, including Lelo Inc. and Leloi AB (collectively, ''Lelo''). On July 25, 2012, the Commission determined not to review an ID (Order No. 25) granting complainants' motion to withdraw the '779 patent from the investigation.

On June 17, 2013, the Commission issued its final determination finding

that Standard Innovation had proven a violation of section 337 based on the infringement of the asserted claims of the '605 patent. Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing products, the Commission issued a general exclusion order against certain kinesiotherapy devices that infringe the asserted claims of the '605 patent. The Commission also issued cease and desist orders against certain respondents, including Lelo Inc.

On September 30, 2013, Lelo filed a request with the Commission asking for institution of an advisory opinion proceeding as to whether their new kinesiotherapy devices are covered by the general exclusion order or the cease and desist order issued against Lelo Inc. Standard Innovation filed a response on November 12, 2013, opposing Lelo's request.

The Commission has determined that Lelo's request complies with the requirements for institution of an advisory opinion proceeding under Commission Rule 210.79. Accordingly, the Commission has determined to institute an advisory opinion proceeding and refer Lelo's request to the Office of Unfair Import Investigations (''OUII''). The parties will furnish OUII with information as requested, and OUII shall investigate and issue a report to the Commission within ninety (90) days of the date of publication of this notice in the **Federal Register**. The Commission will issue an advisory opinion by June 30, 2014, based on the written report of OUII. The following entities are named as parties to the proceeding: (1) Complainant Standard Innovation and (2) respondent Lelo.

The authority for the Commission's determination is contained in sections 335 and 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1335, 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: February 7, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–03104 Filed 2–12–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–005]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 24, 2014 at 1:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–749 (Third Review) (Persulfates from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on March 10, 2014.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 11, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–03253 Filed 2–11–14; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0015]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application for Tax Exempt Transfer and Registration of Firearm

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 238, page 75374 on December 11, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 17, 2014. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Tax Exempt Transfer and Registration of Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5 (5320.5). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Business or other for-profit, and Individuals or households.

Need for Collection

ATF F 5 (5320.5) is used to apply for permission to transfer a National Firearms Act (NFA) firearm exempt from transfer tax based on statutory exemptions. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State and local law. The change to the form is to combine information that is currently captured on another form.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,688 respondents will take an average of 33 minutes to complete the form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 5,287 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: February 10, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–03151 Filed 2–12–14; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110—NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested; New Collection; National Crime Information Center (NCIC)

ACTION: 60-day notice.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 14, 2014.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Travis Olson, Acting Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module D–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–2924.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* National Crime Information Center.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: federal, state, local, territorial, and tribal law enforcement agencies. Abstract: Under United States Code, Title 28, Section 534, Acquisition, Preservation, and Exchange of Identification Records; Appointment of Officials, June 11, 1930; Code of Federal Regulations, Title 28, Part 20, Criminal Justice Information, this collection requests information from federal, state, local, territorial, and tribal law enforcement agencies. The NCIC is a computerized information system available to law enforcement and criminal justice agencies nationwide. NCIC became operational on January 27, 1967, with the goal of assisting law enforcement in the apprehension of fugitives and locating stolen property. This goal has expanded to include locating missing persons and further protecting law enforcement personnel and the public. The NCIC is the sole system that houses actionable criminal justice and law enforcement data from more than 90,000 users nationwide. The average transactions per day in FY 2013 were 9.6 million. On September 13, 2013, NCIC had a peak daily transaction volume of 12.21 million transactions. The system was available 99.75 percent of the time in FY 2013. The last major upgrade to NCIC occurred in July 1999, with the transition to NCIC 2000. The CJIS Division has implemented many enhancements to the system since 1999, in an effort to continue to meet the needs of the stakeholders. The NCIC stakeholders include law enforcement and criminal justice users at all levels (federal, state, local, territorial, and tribal). As the lifecycle of NCIC 2000 nears its end, the CJIS Division is preparing for the next major upgrade to NCIC known as NCIC 3 rd Generation (N3G). The mission of N3G is to partner with stakeholders to identify new functionality and information sharing services that will improve, modernize and expand the existing NCIC system so that it will continue to provide real time, accurate, and complete criminal justice information to support the NCIC user community. With OMB approval, the CJIS Division will be conducting a requirements canvass in FY14 and FY15 for N3G. The purpose of the requirements study is to gather and evaluate the needs of the law enforcement and criminal justice communities. Subsequently, the needs of the users will be documented in concepts and scenarios that will ultimately become the Concept of Operations (CONOPS) for the development of the N3G. It is vital that the new capabilities and functionality are detailed in a robust CONOPS to ensure that the system is developed to meet the current and future needs of the users.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is anticipated that the N3G Canvass will be conducted at a focal point in all 50 states. The canvass will include interviewing the respective state CSO along with any technical and policy staff, i.e., Computer Engineer(s), they deem appropriate. The on-site canvass will be conducted at the CSA facility and the additional individuals

will be required to travel to that respective facility. The CSO and their staff will be at the location for a total of four hours for the state based interview. The state employees will remain at the location during the local level interview process. This interview will include twelve local law enforcement personnel during an additional four hours. It is expected that four of the local personnel will be within the respective city incurring no travel burden. It is anticipated that eight of the local law enforcement personnel from two different districts will require up to four hours travel time (two hours each way) to the interview location, thus four hours burden for eight people.

It is anticipated that ten additional interviews will be conducted that do not fall within the CSO location. These interviewees will consist of the manager, two computer engineers and ten additional personnel.

The estimate of the respondent's burden for this data collection is as follows:

Number of N3G respondents: 880.

Frequency of responses: One session (4 hours each) for Local Law Enforcement Personnel; Two sessions (4 hours each) for CSO and two Computer Engineers except when interviewing at a CSA.

Total annual responses: Once for Local Law Enforcement personnel and twice for CSOs and Computer Engineers.

Hours per response: 4 hours.

Hours for Travel for 8 Local LE personnel per location: 4 hours.

Annual Hour Burden: 5,720 hours.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 5,720 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: February 10, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–03152 Filed 2–12–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application for Tax Paid Transfer and Registration of Firearm

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 238, page 75375 on December 11, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 17, 2014. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Tax Paid Transfer and Registration of Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4 (5320.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households.

Need for Collection

ATF F 4 (5320.4) is required to apply for the transfer and registration of a National Firearms Act (NFA) firearm. The information on the form is used by NFA Branch personnel to determine the legality of the application under Federal, State, and local law.

The changes to the form are to allow the applicant to pay the transfer tax by credit or debit card, clarify instructions, and combine information that is currently captured on another form.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 65,085 respondents will take an average of 1.68 hours to complete the form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 109,552 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: February 10, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–03150 Filed 2–12–14; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *November 25, 2013 through November 29, 2013.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,908	Joy Technologies, LLC, Joy Global, Inc., All Seasons Temporaries, Manpower.	Franklin, PA	July 15, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,039	Mitchell International, Inc., ACS Service Center, Volt	San Diego, CA	August 29, 2012.
83,039A	Mitchell International, Inc., ACS Service Center, Volt	Redondo Beach, CA	August 29, 2012.
83,135	Chippenhook Services LLC, D/B/A Agilus, Chippenhook Corporation	Carrollton, TX	October 7, 2012.
83,137	W.W. Grainger, Inc., Financial Shared Services	Niles, IL	October 10, 2012.
83,148	Premier Pet Products, Inc., & Premier Pet Products LLC, Radio Systems Corporation, Diversified Sourcing.	Midlothian, VA	June 1, 2013.
83,150	Advanced Energy Industries, Inc., Mid Oregon Personnel	Bend, OR	December 1, 2013.
83,150A	Advanced Energy Industries, Inc., Adecco, Aerotek and Resource Manufacturing.	Fort Collins, CO	December 1, 2013.
83,163	Osram Sylvania PR Corporation, Jobs for You, Inc	Luquillo, PR	October 21, 2012.
83,175	John Wiley and Sons, Inc., Creative Services Group	Indianapolis, IN	October 25, 2012.
83,188	John Wiley and Sons, Inc., Creative Services Group	Hoboken, NJ	October 30, 2012.
83,219	Covidien LP, Vascular Therapies Division. fka Tyco Healthcare Group, Covidien PLC.	San Jose, CA	November 8, 2012.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
83,165	Texas/New Mexico Newspaper Partnership, D/B/A York Newspaper Company (YNC), Design Team.	York, PA.	
83,165A	Texas/New Mexico Newspaper Partnership, D/B/A Chambersburg Public Opinion (PO), Design Team.	Chambersburg, PA.	
83,165B	Texas/New Mexico Newspaper Partnership, D/B/A Lebanon Daily News (LDN), Design Team.	Lebanon, PA.	
83,165C	Texas/New Mexico Newspaper Partnership, D/B/A Hanover Evening Sun (HAN), Design Team.	Hanover, PA.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
83,056	Dairy Farmers of America, Inc., Penmac Staffing	Monett, MO.	
83,184	Redflex Traffic Systems, Inc., North American Division, Redflex Holdings, Iconma, BPS, AZ Tech, Volt.	Phoenix, AZ.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
83,207	Dayton Rogers Manufacturing Company of Florida	St. Petersburg, FL.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
83,108	Berkebile Excavating Company, Inc., Johnstown Specialty Castings, Inc., Whemco.	Johnstown, PA.	

I hereby certify that the aforementioned determinations were issued during the period of *November 25, 2013 through November 29, 2013.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC, the 6th day of December 2013.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–03165 Filed 2–12–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0056]

OSHA–7 Form (''Notice of Alleged Safety and Health Hazard''); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Notice; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a document in the **Federal Register** on January 24, 2014 (79 FR 4180), soliciting public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the OSHA–7 Form. The document contained an incorrect docket number. This notice corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3909, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

Correction:

In the **Federal Register** of January 24, 2014 (79 FR 4180–4181), correct the docket number as described below.

1. On page 4180, in the third line of the heading section, change the Docket No. to read:

[Docket No. OSHA–2010–0056]

2. On page 4180, in the first column, change the paragraph titled ''Mail, hand delivery, express mail, or messenger or courier service'' to read:

When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0056, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

3. On page 4180, in the second column, change the paragraph titled ''Instructions'' to read:

All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0056) for the Information Collection Request (ICR). All comments, including any personal information provided, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

4. On page 4181, in the second column, change the first paragraph under ''IV Public Participation—Submission of Comments '' to read:

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulation.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0056). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice title **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on February 7, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–03123 Filed 2–12–14; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Final Sequestration Report to the President and Congress for Fiscal Year 2014

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the OMB Final Sequestration Report to the President and Congress for FY 2014.

SUMMARY: OMB is issuing its Final Sequestration Report to the President and Congress for FY 2014 to report on compliance of enacted 2014 discretionary appropriations legislation with the discretionary caps. The report finds that enacted appropriations are within the current law defense and non-defense discretionary limits for 2014; therefore, a sequestration of discretionary budget authority is not required.

DATES: *Effective Date:* February 7, 2014. Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, requires the Office of Management and Budget (OMB) to issue its Final Sequestration Report 15 calendar days after the end of a congressional session. With regard to this final report and to each of the three required sequestration reports, section 254(b) specifically states the following:

SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the

Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the **Federal Register**.

ADDRESSES: The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: *http://www.whitehouse.gov/omb/legislative_reports/sequestration.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, FAX number: (202) 395–4768 or Jenny Winkler Murray, 6236 New Executive Office Building, Washington, DC 20503, Email address: *jwinkler@omb.eop.gov,* telephone number: (202) 395–7763, FAX number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

Sylvia M. Burwell,

Director.

[FR Doc. 2014–03207 Filed 2–12–14; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Emergency Provision

Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit emergency provision for hazardous waste stored in Antarctica at a location other than a permanent station for more than 12 months due to an emergency, as specified by § 671.17.

SUMMARY: The Program of Environment Safety and Health in the Division of Polar Programs in accordance with § 671.17, is giving notice that an emergency relating to considerations of human health and safety caused hazardous waste to be stored in a location other than a permanent station for more than 12 months.

Hazardous waste in the form of one 55 gallon drum of waste fuel was packaged for removal from the field camp at the end of the 2012–2013 season. This waste was to be removed during the 2013–2014 summer season.

Due to the October 2013 government shutdown, the National Science Foundation began an orderly shutdown to ''caretaker status'' (i.e. the protection of life and property only) of the United States Antarctic Program (USAP). Once the government was reopened, it was impossible to support a normal summer field season. The lack of infrastructure available included the means to support a safe operation to recover this waste fuel drum. This was due to the lack of skilled labor and the lack of ability to stage a fuel cache between McMurdo Station and the PIG camp (required due to the extreme distance between McMurdo Station's airfield and the location of the PIG camp).

During the 2014–2105 austral summer season, the priority will be to remove the hazardous waste drum at the PIG field camp to McMurdo Station, where it will be removed from the continent.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at (703) 292–7420.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–03183 Filed 2–12–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On December 9, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit modification request received. After carefully considering all comments received and responses from the applicant, the permit modification was issued on February 6, 2014 to:

Eric Stangeland, Quark Expeditions, Permit No. 2014–006

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–03148 Filed 2–12–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366; NRC–2008–0585]

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Exemption

1.0 Background

The Southern Nuclear Operating Company, Inc. (SNC, the licensee) is the holder of the Renewed Facility Operating License Nos. DPR–57 and NPF–5 which authorize operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (HNP). The licenses provide, among other things, that the facility is subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect.

The HNP facility consists of two boiling-water reactors located in Appling County, Georgia.

2.0 Request/Action

Pursuant to § 50.12 of Title 10 of the *Code of Federal Regulations* (10 CFR), Specific Exemptions, SNC has, by letter dated April 23, 2013, requested an exemption from the fuel cladding material requirements in 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' and Appendix K to 10 CFR Part 50, ''ECCS Evaluation Models,'' (Appendix K).

The SNC's letter of April 23, 2013, constitutes the licensee's second request for an exemption from the above fuel cladding material requirements in order to irradiate two GE14 Lead Test Assemblies (LTAs) in the HNP. The LTAs include a limited number of fuel rods manufactured with an advanced cladding alloy, known as Global Nuclear Fuel (GNF) Ziron, which is outside of the cladding materials specified in the regulations (i.e. zircaloy or ZIRLO™). By letter dated November 7, 2008, the NRC approved an earlier SNC request for an exemption in order to irradiate these two GE14 LTAs in the HNP Unit 2 reactor for cycles 21, 22 and 23. These two LTAs have now completed operation in cycles 21 and 22; however, SNC decided not to include them in the Unit 2 cycle 23 core loading in order to allow sufficient time to perform pool-side inspections. Since the original exemption request applied only to the operation of the LTAs in the Unit 2 reactor for cycles 21–23, SNC has requested a second exemption in order to continue irradiation of the LTAs in either of the HNP reactors for one or more additional cycles, up to GNF's approved peak pellet exposure.

The regulation in 10 CFR 50.46 contains acceptance criteria for an ECCS for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46, and Appendix K is needed to irradiate a lead test assembly (LTA) comprised of different cladding alloys at HNP.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to insert two lead test fuel assemblies with fuel rod cladding that does not meet the definition of zircaloy or ZIRLO™, as specified by 10 CFR 50.46, and Appendix K, in either of the HNP reactors for one or more additional cycles, up to GNF's approved peak pellet exposure. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

In regard to the fuel mechanical design, the exemption request relates solely to the specific types of cladding material specified in the regulations. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS. In Section VI of its letter dated April 23, 2013, SNC provides a technical basis supporting the applicability of the 50.46 Paragraph (b) fuel criteria to GNF-Ziron. Experimental results from tests conducted on GNF-Ziron samples exposed to loss-of-coolant accident (LOCA) conditions were provided by SNC. While these tests differ from the post-steam oxidized ring-compression testing (which forms the basis of the 10 CFR 50.46 post-quench ductility criteria), these results provide reasonable assurance that the 17 percent oxidation and 2200 degree Farenheit criteria are valid for GNF-Ziron and meet the underlying purpose of the rule, which is to maintain a degree of post-quench ductility in the fuel cladding material.

As discussed in the NRC Research Information Letter 0801, ''Technical Basis for Revision of Embrittlement Criteria in 10 CFR 50.46,'' ADAMS Accession No. ML081350225, based on an ongoing LOCA research program at Argonne National Laboratory, cladding corrosion (and associated hydrogen pickup) has a significant impact on post-quench ductility. Post-irradiation examinations provided by the licensee demonstrate the favorable hydrogen pickup characteristics of GNF-Ziron as compared with standard zircaloy. Hence, the GNF-Ziron fuel rods would be less susceptible to the detrimental effects of hydrogen uptake during normal operation and their impact on post-quench ductility.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the LTA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by GNF on GNF-Ziron, as described in the application for exemption, demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, application of Appendix K, Paragraph I.A.5 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

High temperature perforation test results were included in the application. These test results illustrate similar burst characteristics of GNF-Ziron as compared with standard zircaloy. In addition, the licensee provides further comparisons of material properties between GNF-Ziron and zircaloy. Based upon this comparison of material properties, GNF and SNC believe that currently approved methods and models are directly applicable to GNF-Ziron. Based upon the material properties provided in SNC's letter dated April 23, 2013, the NRC staff finds the use of current LOCA models and methods acceptable for the purpose of evaluating LTAs containing a limited number of GNF-Ziron fuel rods. The staff notes that Section V of GNF's technical basis document (Enclosure 2 of the April 23, 2013 application) states that the GNF fuel rod thermal mechanical code PRIME03 is now being used to assess fuel rod performance. The PRIME03 code, which accounts for exposure-dependent fuel thermal conductivity, replaces the legacy GESTRM fuel rod performance code. While not explicitly approved for GNF-Ziron, the use of PRIME03 is consistent with the approved GNF reload methodology and therefore acceptable.

Through the mechanical testing and a comparison of material properties provided by SNC, the staff has reasonable assurance that anticipated in-reactor performance will be acceptable. Further, the licensee has demonstrated that the use of current methods and models are reasonable for evaluating the cladding's performance in response to anticipated operational occurrences and accidents. Nevertheless, as with any developmental cladding alloy, the NRC staff requires a limitation on the total number of fuel rods clad in a developmental alloy in order to ensure a minimal impact on the simulated progression and calculated consequences of postulated accidents. This limitation is directly related to the available material properties (both unirradiated and irradiated) used to judge the cladding alloy's anticipated in-reactor performance. Based on the material properties data presented within the application attachments, the NRC staff finds the HNP LTA program acceptable with respect to achieving the underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50.

Based upon results of metal-water reaction tests and mechanical testing which ensure the applicability of ECCS models and acceptance criteria, the limited number and anticipated performance of the advanced cladding fuel rods, and the use of approved LOCA models to ensure that the LTAs satisfy 10 CFR 50.46 acceptance criteria, the NRC staff finds it acceptable to grant an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the use of two LTAs in either of the HNP reactors for one or more additional cycles, up to GNF's approved peak pellet exposure.

Consistent With Common Defense and Security

The proposed exemption would allow the licensee to insert two lead test fuel assemblies with fuel rod cladding that does not meet the definition of zircaloy or ZIRLO™ as specified by 10 CFR 50.46, and Appendix K, into either of the HNP reactors for one or more additional cycles, up to GNF's approved peak pellet exposure. This change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12, are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for emergency core cooling system performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to Ziron, even though the evaluations discussed above show that the intent of the regulations is met. Therefore, since the NRC staff finds that the underlying purpose of 10 CFR 50.46 and Appendix K is achieved with the use of Ziron, the special circumstances required by 10 CFR 50.12 for the granting of an exemption from 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC an exemption from the requirements of 10 CFR 50.46, and 10 CFR Part 50, Appendix K, to allow the limited use of two LTAs with selected rods clad with GNF-Ziron cladding in either of the HNP reactors for one or more additional cycles, up to GNF's approved peak pellet exposure.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (79 FR 4983; January 30, 2014).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of February 2014.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–03215 Filed 2–12–14; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This provides the consolidated notice of all agency specific excepted authorities, approved by the Office of Personnel Management (OPM), under Schedule A, B, and C, as of June 30, 2013, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the U.S. Office of Personnel Management (OPM) to publish notice of exceptions granted under Schedule A, B, and C. Under 5 CFR 213.103(a) it is required that all Schedule A, B, and C appointing authorities available for use by all agencies to be published as regulations in the **Federal Register** (FR) and the Code of Federal Regulations (CFR). Excepted appointing authorities established solely for use by one specific agency do not meet the standard of general applicability prescribed by the **Federal Register** Act for regulations published in either the FR or the CFR. Therefore, 5 CFR 213.103(b) requires monthly publication, in the Notices section of the **Federal Register**, of any Schedule A, B, and C appointing authorities applicable to a single agency. Under 5 CFR 213.103(c) it is required that a consolidated listing of all Schedule A, B, and C authorities, current as of June 30 of each year, be published annually in the Notices section of the **Federal Register** at *www.federalregister.gov/agencies/personnel-management-office.* That notice follows. Governmentwide authorities codified in the CFR are not printed in this notice.

When making appointments under an agency-specific authority, agencies should first list the appropriate Schedule A, B, or C, followed by the applicable number, for example: Schedule A, 213.3104(x)(x). Agencies are reminded that all excepted authorities are subject to the provisions of 5 CFR part 302 unless specifically exempted by OPM at the time of approval. OPM maintains continuing information on the status of all Schedule A, B, and C appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Senior Executive Resources Services, Office of Personnel Management, 1900 E Street NW., Room 7412, Washington, DC 20415, or by calling (202) 606–2246.

The following exceptions are current as of June 30, 2013.

Schedule A

03. Executive Office of the President (Sch. A, 213.3103)

(a) Office of Administration—

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget—

(1) Not to exceed 20 positions at grades GS–5/15.

(c) Council on Environmental Quality—

(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved)

(g) National Security Council—

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy—

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy—

(1) Not to exceed 18 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

04. Department of State (Sch. A, 213.3104)

(a) Office of the Secretary—

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service

and the Director of Personnel, Office of the Under Secretary for Management.

(2) (Reserved)

(b)–(f) (Reserved)

(g) Bureau of Population, Refugees, and Migration—

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration—

(1) (Reserved)

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) (Reserved)

05. Department of the Treasury (Sch. A, 213.3105)

(a) Office of the Secretary—

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken.

(2) Covering no more than 100 positions supplementing permanent staff studying domestic economic and financial policy, with employment not to exceed 4 years.

(3) Not to exceed 100 positions in the Office of the Under Secretary for Terrorism and Financial Intelligence.

(4) Up to 35 temporary or time-limited positions at the GS–9 through 15 grade levels to support the organization, design, and stand-up activities for the Consumer Financial Protection Bureau (CFPB), as mandated by Public Law 111–203. This authority may be used for the following series: GS–201, GS–501, GS–560, GS–1035, GS–1102, GS–1150, GS–1720, GS–1801, and GS–2210. No new appointments may be made under this authority after July 21, 2011, the designated transfer date of the CFPB.

(b)–(d) (Reserved)

(e) Internal Revenue Service—

(1) Twenty positions of investigator for special assignments.

(f) (Reserved)

(g) (Reserved, moved to DOJ)

(h) Office of Financial Responsibility—

(1) Positions needed to perform investment, risk, financial, compliance, and asset management requiring unique qualifications currently not established by OPM. Positions will be in the Office of Financial Stability and the General Schedule (GS) grade levels 12–15 or Senior Level (SL), for initial employment not to exceed 4 years. No new appointments may be made under this authority after December 31, 2012.

06. Department of Defense (Sch. A, 213.3106)

(a) Office of the Secretary—

(1)–(5) (Reserved)

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force)—

(1) Dependent School Systems overseas—Professional positions in Military Dependent School systems overseas.

(2) Positions in Attaché 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided that

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) (Reserved)

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after September 30, 2014.

(11) Not to exceed 3,000 positions that require unique cyber security skills and knowledge to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis, and cyber-related infrastructure inter-dependency analysis. This authority may be used to make permanent, time-limited and temporary appointments in the following occupational series: Security (GS–0080), Intelligence Analysts (GS–0132), Computer Engineers (GS–0854), Electronic Engineers (GS–0855), Computer Scientists (GS–1550), Operations Research (GS–1515), Criminal Investigators (GS–1811), Telecommunications (GS–0391), and IT Specialists (GS–2210). Within the scope of this authority, the U.S. Cyber Command is also authorized to hire miscellaneous administrative and program (GS–0301) series when those positions require unique qualifications not currently established by OPM. All positions will be at the General Schedule (GS) grade levels 09–15. No

new appointments may be made under this authority after December 31, 2013.

(c) (Reserved)

(d) General—

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical, or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences—

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University—

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency—

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisition University—

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany—

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii—

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

(k) Business Transformation Agency—

(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS–11 through GS–15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS–343: Logistics Management, GS–346; Financial Management Programs, GS–501; Accounting, GS–510; Computer Engineering, GS–854; Business and Industry, GS–1101; Operations Research, GS–1515; Computer Science, GS–1550; General Supply, GS–2001; Supply Program Management, GS–2003; Inventory Management, GS–2010; and Information Technology, GS–2210.

(l) Special Inspector General for Afghanistan—

(1) Positions needed to establish the Special Inspector General for Afghanistan Reconstruction. These positions provide for the independent and objective conduct and supervision of audits and investigations relating to the programs and operations funded with amounts appropriated and otherwise made available for the reconstruction of Afghanistan. These positions are established at General Schedule (GS) grade levels for initial employment not to exceed 3 years and may, with prior approval of OPM, be extended for an additional period of 2 years. No new appointments may be made under this authority after January 31, 2011.

07. Department of the Army (Sch. A, 213.3107)

(a)–(c) (Reserved)

(d) U.S. Military Academy, West Point, New York—

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and Librarian when filled by an officer of the Regular Army retired from active service, and the Military Secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved)

(g) Defense Language Institute—

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA—

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved)

(j) U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey—

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas—

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

08. Department of the Navy (Sch. A, 213.3108)

(a) General—

(1)–(14) (Reserved)

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College—

(1) Professors, Instructors, and Teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and Social Counselors at the Naval Academy.

(c) Chief of Naval Operations—

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command

(1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) (Reserved)

(g) Office of Naval Research—

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

09. Department of the Air Force (Sch. A, 213.3109)

(a) Office of the Secretary—

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General—

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred eighty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Norton and McClellan Air Force Bases, California—

(1) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado—

(1) (Reserved)

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved)

(f) Air Force Office of Special Investigations—

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Wright-Patterson Air Force Base, Ohio—

(1) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama—

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio—

(1) Civilian deans and professors.

(j) Air Force Logistics Command—

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) Wright-Patterson AFB, Ohio—

(1) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) Air National Guard Readiness Center—

(1) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

10. Department of Justice (Sch. A, 213.3110)

(a) General—

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved)

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in 1-year increments for the duration of the in-country program.

(7) Positions necessary throughout DOJ, for the excepted service transfer of NDIC employees hired under Schedule A, 213.3110(d). Authority expires September 30, 2012.

(b) (Reserved, moved to DHS)

(c) Drug Enforcement Administration—

(1) (Reserved)

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) (Reserved, moved to Justice)

(e) Bureau of Alcohol, Tobacco, and Firearms—

(1) One hundred positions of Criminal Investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

11. Department of Homeland Security (Sch. A, 213.3111)

(a) (Revoked 11/19/2009)

(b) Law Enforcement Policy—

(1) Ten positions for oversight policy and direction of sensitive law enforcement activities.

(c) Homeland Security Labor Relations Board/Homeland Security Mandatory Removal Board—

(1) Up to 15 Senior Level and General Schedule (or equivalent) positions.

(d) General—

(1) Not to exceed 1,000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident

response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2013.

(e) Papago Indian Agency—Not to exceed 25 positions of Immigration and Customs Enforcement (ICE) Tactical Officers (Shadow Wolves) in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood. (Formerly 213.3105(b)(9))

(f) U.S. Citizenship and Immigration Services

(1) Reserved. (Formerly 213.3110(b)(1))

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9. (Formerly 213.3110(b)(2))

(3) Reserved. (Formerly 213.3110(b)(3))

12. Department of the Interior (Sch. A, 213.3112)

(a) General—

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators, and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved)

(c) Indian Arts and Crafts Board—

(1) The Executive Director

(d) (Reserved)

(e) Office of the Assistant Secretary, Territorial and International Affairs—

(1) (Reserved)

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved)

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service—

(1) (Reserved)

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation—

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs—

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

13. Department of Agriculture (Sch. A, 213.3113)

(a) General—

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved)

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of Sec. 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved)

(b)–(c) (Reserved)

(d) Farm Service Agency—

(1) (Reserved)

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development—

(1) (Reserved)

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–5) (Reserved)

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service—

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, peanut, and processed and fresh fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved)

(l) Food Safety and Inspection Service—

(1)–(2) (Reserved)

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration—

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation—

(1) Executive Director

14. Department of Commerce (Sch. A, 213.3114)

(a) General—

(1)–(2) (Reserved)

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved)

(d) Bureau of the Census—

(1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved)

(i) Office of the Under Secretary for International Trade—

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved)

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be

filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period not to exceed 2 years and may, with prior OPM approval, be extended for an additional 2 years.

(j) National Oceanic and Atmospheric Administration—

(1)–(2) (Reserved)

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved)

(l) National Telecommunication and Information Administration—

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

15. Department of Labor (Sch. A, 213.3115)

(a) Office of the Secretary—

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved)

(d) Employment and Training Administration—

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

16. Department of Health and Human Services (Sch. A, 213.3116)

(a) General—

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service—

(1) (Reserved)

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved)

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved)

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved)

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved)

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved)

(f) The President's Council on Physical Fitness—

(1) Four staff assistants.

17. Department of Education (Sch. A, 213.3117)

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

18. Board of Governors, Federal Reserve System (Sch. A, 213.3118)

(a) All positions

27. Department of Veterans Affairs (Sch. A, 213.3127)

(a) Construction Division—

(1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Alcoholism Treatment Units and Drug Dependence Treatment Centers—

(1) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals—

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Vietnam Era Veterans Readjustment Counseling Service—

(1) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

32. Small Business Administration (Sch. A, 213.3132)

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under

15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

33. Federal Deposit Insurance Corporation (Sch. A, 213.3133)

(a)–(b) (Reserved)

(c) Temporary or time-limited positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. Time-limited appointments under this authority may not exceed 7 years.

36. U.S. Soldiers' and Airmen's Home (Sch. A, 213.3136)

(a) (Reserved)

(b) Positions when filled by member-residents of the Home.

46. Selective Service System (Sch. A, 213.3146)

(a) State Directors

48. National Aeronautics and Space Administration (Sch. A, 213.3148)

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

55. Social Security Administration (Sch. A, 213.3155)

(a) Arizona District Offices—

(1) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) New Mexico—

(1) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Alaska—

(1) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

62. The President's Crime Prevention Council (Sch. A, 213.3162)

(a) (Reserved)

65. Chemical Safety and Hazard Investigation Board (Sch. A, 213.3165)

(a) (Reserved)

(b) (Reserved)

66. Court Services and Offender Supervision Agency of the District of Columbia (Sch. A, 213.3166)

(a) (Reserved, expired 3/31/2004)

70. Millennium Challenge Corporation (MCC) (Sch. A, 213.3170)

(a) (Reserved, expired 9/30/2007)

(b)

(1) Positions of Resident Country Directors and Deputy Resident Country Directors. The length of appointments will correspond to the length or term of the compact agreements made between the MCC and the country in which the MCC will work, plus one additional year to cover pre- and post-compact agreement related activities.

74. Smithsonian Institution (Sch. A, 213.3174)

(a) (Reserved)

(b) Smithsonian Tropical Research Institute—All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) National Museum of the American Indian—Positions at GS–15 and below requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

75. Woodrow Wilson International Center for Scholars (Sch. A, 213.3175)

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, two Social Science Program Administrators, one Middle East Studies Program Administrator, one African Studies Program Administrator, one Global Sustainability and Resilience Program Administrator, one Canadian Studies Program Administrator; one China Studies Program Administrator, and one Science, Technology and Innovation Program Administrator.

78. Community Development Financial Institutions Fund (Sch. A, 213.3178)

(a) (Reserved, expired 9/23/1998)

80. Utah Reclamation and Conservation Commission (Sch. A, 213.3180)

(a) Executive Director

82. National Foundation on the Arts and the Humanities (Sch. A, 213.3182)

(a) National Endowment for the Arts—

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy, or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

90. African Development Foundation (Sch. A, 213.3190)

(a) One Enterprise Development Fund Manager. Appointment is limited to four years unless extended by OPM.

91. Office of Personnel Management (Sch. A, 213.3191)

(a)–(c) (Reserved)

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

94. Department of Transportation (Sch. A, 213.3194)

(a) U.S. Coast Guard—

(1) (Reserved)

(2) Lamplighters

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved)

(e) Maritime Administration—

(1)–(2) (Reserved)

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved)

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and

Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

(f) Up to 40 positions at the GS–13 through 15 grade levels and within authorized SL allocations necessary to support the following credit agency programs of the Department: the Federal Highway Administration's Transportation Infrastructure Finance and Innovation Act Program, the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program, the Federal Maritime Administration's Title XI Program, and the Office of the Secretary's Office of Budget and Programs Credit Staff. This authority may be used to make temporary, time-limited, or permanent appointments, as the DOT deems appropriate, in the following occupational series: Director or Deputy Director SL–301/340, Origination Team Lead SL–301, Deputy Director/Senior Financial Analyst GS–1160, Origination Financial Policy Advisor GS–301, Credit Budgeting Team Lead GS–1160, Credit Budgeting Financial Analysts GS–1160, Portfolio Monitoring Lead SL–1160, Portfolio Monitoring Financial Analyst GS–1160, Financial Analyst GS–1160. No new appointments may be made under this authority after December 31, 2014.

95. Federal Emergency Management Agency (Sch. A, 213.3195)

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Schedule B

03. Executive Office of the President (Sch. B, 213.3203)

(a) (Reserved)

(b) Office of the Special Representative for Trade Negotiations—

(1) Seventeen positions of economist at grades GS–12 through GS–15.

04. Department of State (Sch. B, 213.3204)

(a) (1) One non-permanent senior level position to serve as Science and Technology Advisor to the Secretary.

(b)–(c) (Reserved)

(d) Seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved)

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

05. Department of the Treasury (Sch. B, 213.3205)

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved)

(d) (Reserved) Transferred to 213.3211(b)

(e) (Reserved) Transferred to 213.3210(f)

06. Department of Defense (Sch. B, 213.3206)

(a) Office of the Secretary—

(1) (Reserved)

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved)

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities—

(1) Seven positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University—

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General—

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General—

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama—

(1) One Director, GM–15.

(g) Defense Security Assistance Agency—

All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air

Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

07. Department of the Army (Sch. B, 213.3207)

(a) U.S. Army Command and General Staff College—

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

08. Department of the Navy (Sch. B, 213.3208)

(a) Naval Underwater Systems Center, New London, Connecticut—

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) Armed Forces Staff College, Norfolk, Virginia—All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) Defense Personnel Security Research and Education Center—One Director and four Research Psychologists at the professor or GS–15 level.

(d) Marine Corps Command and Staff College—All civilian professor positions.

(e) Executive Dining facilities at the Pentagon—One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) (Reserved)

09. Department of the Air Force (Sch. B, 213.3209)

(a) Air Research Institute at the Air University, Maxwell Air Force Base, Alabama—Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1-, 2-, or 3-years indefinitely thereafter.

(b)–(c) (Reserved)

(d) Air University—Positions of Instructor or professional academic staff at the Air University associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) U.S. Air Force Academy, Colorado—One position of Director of Development and Alumni Programs, GS–301–13.

10. Department of Justice (Sch. B, 213.3210)

(a) Drug Enforcement Administration—

Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved)

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved)

(e) United States Trustees—Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

(f) Bureau of Alcohol, Tobacco, and Firearms

(1) Positions, grades GS–5 through GS–12 (or equivalent), of Criminal Investigator. Service under this authority may not exceed 3 years and 120 days.

11. Department of Homeland Security (Sch. B, 213.3211)

(a) Coast Guard.

(1) (Reserved)

(b) Secret Service—Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed:

(1) a total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203.

13. Department of Agriculture (Sch. B, 213.3213)

(a) Foreign Agricultural Service—

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General—

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

14. Department of Commerce (Sch. B, 213.3214)

(a) Bureau of the Census—

(1) (Reserved)

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through 12.

(b)–(c) (Reserved)

(d) National Telecommunications and Information Administration—

(1) Not to exceed 10 Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

15. Department of Labor (Sch. B, 213.3215)

(a) Administrative Review Board—Chair and a maximum of four additional Members.

(b) (Reserved)

(c) Bureau of International Labor Affairs—

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

17. Department of Education (Sch. B, 213.3217)

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

27. Department of Veterans Affairs (Sch. B, 213.3227)

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration (VA) supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

28. Broadcasting Board of Governors (Sch. B, 213.3228)

(a) International Broadcasting Bureau—

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

36. U.S. Soldiers' and Airmen's Home (Sch. B, 213.3236)

(a) (Reserved)

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

40.

(a) Executive Director, National Historical Publications and Records Commission.

48. National Aeronautics and Space Administration (Sch. B, 213.3248)

(a) Not to exceed 40 positions of Astronaut Candidates at grades GS–11 through 15. Employment under this authority may not exceed 3 years.

55. Social Security Administration (Sch. B, 213.3255)

(a) (Reserved)

74. Smithsonian Institution (Sch. B, 213.3274)

(a) (Reserved)

(b) Freer Gallery of Art—

(1) Not to exceed four Oriental Art Restoration Specialists at grades GS–9 through GS–15.

76. Appalachian Regional Commission (Sch. B, 213.3276)

(a) Two Program Coordinators.

78. Armed Forces Retirement Home (Sch. B, 213.3278)

(a) Naval Home, Gulfport, Mississippi—

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

82. National Foundation on the Arts and the Humanities (Sch. B, 213.3282)

(a) (Reserved)

(b) National Endowment for the Humanities—

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

91. Office of Personnel Management (Sch. B, 213.3291)

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Federal Executive Institute—Twelve positions of faculty members at grades GS–13 through 15. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Secretary	Special Assistant	DA120098	8/10/2012
		Advisor	DA120105	8/31/2012
	Farm Service Agency	State Executive Director (9)	DA120089	7/3/2012
			DA120097	8/1/2012
			DA120107	9/13/2012
			DA130049	4/15/2013
			DA130067	5/17/2013
			DA130048	5/21/2013
			DA130068	5/31/2013
			DA130074	6/13/2013
			DA130098	6/25/2013
	Natural Resources Conservation Service.	Confidential Assistant (External Liaison).	DA130001	10/16/2012
		Special Assistant	DA130093	6/13/2013
	Office of the Assistant Secretary for Administration.	Senior Advisor (2)	DA130039	4/4/2013
			DA130104	6/28/2013
	Office of the Assistant Secretary for Civil Rights.	Special Assistant	DA130054	5/30/2013
	Office of the Assistant Secretary for Congressional Relations.	Special Assistant (2)	DA120092	7/6/2012
			DA130022	1/25/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
		Staff Assistant (Legislative Analyst)	DA130095	6/13/2013
	Office of the Secretary	Deputy White House Liaison	DA120109	9/19/2012
		White House Liaison	DA130077	5/31/2013
	Office of the Under Secretary for Farm and Foreign Agricultural Service.	State Executive Director	DA130056	4/30/2013
	Office of the Under Secretary for Food, Nutrition and Consumer Services.	Senior Advisor	DA130063	5/3/2013
	Office of the Under Secretary for Rural Development.	Special Assistant	DA130031	4/4/2013
	Office of the Under Secretary for Rural Development.	National Coordinator, Local and Regional Food Systems.	DA130073	6/3/2013
	Office of the Under Secretary for Natural Resources and Environment.	Staff Assistant	DA120091	7/6/2012
	Office of the Under Secretary for Natural Resources and Environment.	Senior Advisor	DA130108	6/28/2013
	Rural Business Service	Chief of Staff	DA130111	6/28/2013
	Rural Housing Service	State Director (4)	DA120064	8/13/2012
			DA130053	4/22/2013
			DA130064	5/3/2013
			DA130097	6/14/2013
		Chief of Staff	DA130050	4/18/2013
DEPARTMENT OF COMMERCE	Advocacy Center	Special Assistant	DC120141	7/24/2012
	Assistant Secretary and Director General for United States and Foreign Commercial Service.	Special Assistant	DC130015	12/13/2012
	Assistant Secretary for Market Access and Compliance.	Senior Advisor	DC120139	7/24/2012
		Special Advisor	DC130057	6/7/2013
	Deputy Assistant Secretary for Domestic Operations.	Special Assistant	DC130061	6/14/2013
	Office of the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.	Senior Advisor	DC130010	11/6/2012
	Office of the Executive Secretariat	Special Assistant	DC130012	11/6/2012
		Confidential Assistant	DC130017	1/4/2013
	Office of Policy and Strategic Planning.	Special Assistant	DC120148	8/7/2012
		Deputy Director, Office of Policy and Strategic Planning.	DC130030	3/18/2013
	Office of Public Affairs	Press Secretary	DC120146	7/25/2012
		Press Assistant	DC130044	5/9/2013
	Office of the Assistant Secretary for Economic Development.	Special Assistant	DC120154	8/23/2012
		Special Advisor	DC120158	10/2/2012
	Office of the Assistant Secretary for Manufacturing and Services.	Senior Advisor	DC120157	9/26/2012
		Deputy Director, Office of Advisory Committees.	DC130002	10/12/2012
	Office of the Chief Economist	Special Assistant	DC120149	8/7/2012
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Senior Director for Performance and Business Process Improvement.	DC120136	7/10/2012
	Office of the Chief of Staff	Director of Advance	DC120134	7/3/2012
		Confidential Assistant	DC120152	8/13/2012
		Protocol Officer and Advance Assistant.	DC130034	3/22/2013
	Office of the Deputy Assistant Secretary for Administration.	Special Assistant	DC130060	6/14/2013
	Office of the Deputy Secretary	Special Assistant	DC130013	11/29/2012
	Office of the Director	Associate Director for Legislative, Education and Intergovernmental Affairs.	DC120137	7/10/2012
	Office of the General Counsel	Deputy General Counsel for Strategic Initiatives.	DC130001	10/3/2012
	Office of the Under Secretary	Chief Communications Officer	DC120150	8/13/2012
		Director, Office of Legislative Affairs.	DC130042	4/30/2013
		Special Assistant	DC130047	5/29/2013
		Deputy Chief of Staff	DC120129	7/10/2012
		Senior Advisor for Oceans and Atmosphere and the Principal Deputy Under Secretary.	DC120127	8/13/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the White House Liaison	Deputy Director, Office of White House Liaison.	DC130024	2/19/2013
		Special Advisor	DC130025	2/19/2013
	Trade Promotion and the U.S. and Foreign Commercial Service.	Special Assistant	DC130041	4/30/2013
COMMISSION ON CIVIL RIGHTS	Commissioners	Special Assistant	CC120004	8/27/2012
COUNCIL ON ENVIRONMENTAL QUALITY.	Council on Environmental Quality	Special Assistant (Communications).	EQ120005	7/3/2012
		Special Assistant (Public Engagement).	EQ120006	7/6/2012
		Special Assistant (Land and Water Ecosystems).	EQ130001	1/29/2013
		Special Assistant (Energy/Climate Change).	EQ130002	2/6/2013
DEPARTMENT OF DEFENSE	Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs.	Special Assistant (Nuclear, Chemical, and Biological Defense Programs).	DD120110	9/28/2012
	Deputy Under Secretary of Defense (Asian and Pacific Security Affairs).	Senior Advisor for Regional Policy and Integration.	DD130001	10/9/2012
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (2)	DD120105	8/13/2012
			DD130075	5/22/2013
	Office of Assistant Secretary of Defense (Public Affairs).	Special Assistant	DD130008	11/1/2012
		Speechwriter (5)	DD130012	11/9/2012
			DD130025	1/11/2013
			DD130026	1/18/2013
			DD130058	5/15/2013
			DD130081	6/21/2013
		Research Assistant	DD130070	5/16/2013
	Office of Assistant Secretary of Defense (Reserve Affairs).	Special Assistant(Reserve Affairs)	DD130022	12/12/2012
	Office of Principal Deputy Under Secretary for Policy.	Special Assistant for Policy (2)	DD130004	10/19/2012
			DD130031	1/25/2013
		Special Assistant for Strategy, Plans and Forces (2).	DD130041	2/13/2013
			DD130074	5/30/2013
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant for South and Southeast Asia (2).	DD120106	8/21/2012
			DD120128	10/16/2012
		Special Assistant for Asian and Pacific Security Affairs.	DD130003	10/19/2012
		Special Assistant	DD130023	12/12/2012
	Office of the Assistant Secretary of Defense (Global Strategic Affairs).	Special Assistant for Cyber Policy	DD130028	12/21/2012
		Special Assistant for Global Strategic Affairs (2).	DD130032	2/7/2013
			DD130036	4/30/2013
	Office of the Assistant Secretary of Defense (Homeland Defense and America's Security Affairs).	Special Assistant for Homeland Defense and Americas' Security Affairs.	DD130050	4/9/2013
		Special Assistant (Western Hemisphere Affairs).	DD130076	5/30/2013
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant for International Security Affairs.	DD130027	12/18/2012
		Special Assistant for Middle East Affairs.	DD130034	2/8/2013
	Office of the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities).	Special Assistant (Special Operations and Low Intensity Conflict).	DD120104	8/2/2012
	Office of the Secretary	Confidential Assistant	DD120118	9/7/2012
		Special Assistant for Protocol	DD130037	2/15/2013
		Deputy White House Liaison	DD130048	3/22/2013
		Protocol Officer	DD130068	5/15/2013
	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Special Assistant (Manufacturing and Industrial Base Policy).	DD130044	3/29/2013
	Office of the Under Secretary of Defense (Personnel and Readiness).	Special Assistant for Personnel and Readiness.	DD120126	10/17/2012
		Director, Defense Suicide Prevention Office.	DD130046	4/22/2013
	Office of the Under Secretary of Defense (Policy).	Staff Assistant	DD120100	8/1/2012
		Principal Director for Strategy	DD130011	10/31/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Washington Headquarters Services	Defense Fellow (9)	DD120086	7/3/2012
			DD120089	7/3/2012
			DD120090	7/3/2012
			DD120091	7/3/2012
			DD120092	7/3/2012
			DD120096	7/12/2012
			DD130043	2/13/2013
			DD130057	4/5/2013
			DD130080	6/13/2013
		Staff Assistant (2)	DD130009	11/9/2012
			DD130042	2/15/2013
DEPARTMENT OF THE AIR FORCE.	Office of the Assistant Secretary for Financial Management and Comptroller.	Special Assistant, Financial Administration and Programs.	DF130017	5/15/2013
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary (Installations and Environment).	Special Advisor	DW120035	8/13/2012
	Office of the General Counsel	Special Assistant	DW120039	9/18/2012
DEPARTMENT OF THE NAVY	Office of the General Counsel	Attorney-Advisor (2)	DN120039	8/24/2012
			DN120040	10/31/2012
	Office of the Under Secretary	Special Assistant	DN120047	8/13/2012
DEPARTMENT OF EDUCATION	Office for Civil Rights	Deputy Assistant Secretary for Policy.	DB120095	10/22/2012
		Confidential Assistant	DB130033	5/17/2013
		Senior Counsel	DB130034	6/28/2013
	Office of Communications and Outreach.	Special Assistant	DB120083	8/30/2012
		Confidential Assistant	DB120089	9/21/2012
		Deputy Assistant Secretary for Communication Development.	DB130008	1/17/2013
		Confidential Assistant (2)	DB130020	2/27/2013
			DB130028	5/6/2013
		Deputy Press Secretary for Strategic Communications.	DB130025	4/19/2013
		Assistant Press Secretary	DB130027	4/19/2013
		Press Secretary	DB130032	4/19/2013
	Office of Elementary and Secondary Education.	Chief of Staff	DB120090	10/12/2012
		Confidential Assistant	DB120094	9/26/2012
		Deputy Assistant Secretary for Policy and Strategic Initiatives.	DB130029	5/17/2013
		Special Assistant (4)	DB120093	9/19/2012
			DB120096	9/24/2012
			DB120099	11/20/2012
			DB130023	3/14/2013
	Office of Innovation and Improvement.	Special Assistant	DB120091	9/14/2012
		Confidential Assistant	DB120102	10/2/2012
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB120080	7/17/2012
		Special Assistant	DB130021	3/5/2013
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB120103	10/12/2012
		Deputy Assistant Secretary for Planning and Policy Development.	DB120098	1/11/2013
		Senior Advisor for Stem	DB120084	8/1/2012
		Special Assistant (5)	DB120077	7/19/2012
			DB120086	8/20/2012
			DB130030	5/17/2013
			DB130035	5/21/2013
			DB130038	5/30/2013
	Office of Postsecondary Education	Special Assistant	DB120078	9/12/2012
		Confidential Assistant	DB120100	9/24/2012
		Deputy Assistant Secretary for International and Foreign Language Education.	DB130031	4/12/2013
	Office of the Deputy Secretary	Confidential Assistant (5)	DB120071	8/16/2012
			DB130015	2/8/2013
			DB130044	5/15/2013
			DB130037	5/30/2013
			DB130052	6/24/2013
		Special Assistant (2)	DB130019	2/27/2013
			DB130024	4/19/2013
	Office of the Secretary	Confidential Assistant (7)	DB120069	7/19/2012
			DB120035	9/7/2012
			DB130001	10/15/2012
			DB130014	2/6/2013
			DB130017	3/5/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
			DB130041	4/30/2013
			DB130045	5/31/2013
		Director, Scheduling and Advance	DB130012	3/27/2013
		Special Assistant	DB130042	5/8/2013
	Office of the Under Secretary	Chief of Staff	DB130043	5/8/2013
		Confidential Assistant (4)	DB120088	9/24/2012
			DB120101	1/11/2013
			DB130013	2/6/2013
			DB130039	5/22/2013
		Deputy Director of the White House Initiative on American Indian and Alaska Native Education.	DB120072	8/1/2012
		Deputy Under Secretary	DB130047	6/28/2013
		Executive Director, White House Initiative for the Employment of African Americans.	DB130018	2/22/2013
		Executive Director, White House Initiative on Educational Excellence for Hispanics.	DB130022	4/3/2013
		Special Assistant (3)	DB120087	8/24/2012
			DB130004	11/15/2012
			DB130011	1/25/2013
	Office of Vocational and Adult Education.	Confidential Assistant (2)	DB120082	7/30/2012
			DB130036	5/17/2013
		Deputy Assistant Secretary for Community Colleges.	DB130048	6/6/2013
		Special Assistant (2)	DB120081	11/15/2012
			DB130010	2/27/2013
DEPARTMENT OF ENERGY	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist	DE120143	10/11/2012
		Senior Legislative Advisor	DE130033	5/21/2013
		Deputy Assistant Secretary for Energy Policy.	DE130066	6/19/2013
	Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Advisor	DE120113	7/6/2012
		Director of Legislative Affairs	DE120145	10/2/2012
		Chief of Staff	DE130037	5/15/2013
		Special Assistant for Clean Energy Manufacturing and Commercialization.	DE130039	6/3/2013
		Director of Legislative Affairs	DE130053	6/18/2013
		Senior Advisor	DE130070	6/25/2013
	Associate Administrator for External Affairs.	Congressional Affairs Specialist	DE130062	6/18/2013
		Deputy Director of Congressional Affairs.	DE130063	6/28/2013
	Office of Assistant Secretary for Policy and International Affairs.	Special Advisor	DE120125	8/13/2012
		Special Assistant	DE130031	4/18/2013
	Office of Economic Impact and Diversity.	Special Advisor	DE120116	8/13/2012
	Office of Environmental Management.	Special Assistant	DE120122	7/24/2012
	Office of Management	Special Assistant	DE120115	7/19/2012
		Deputy Director, Office of Scheduling and Advance.	DE130071	6/28/2013
	Office of Public Affairs	Director of User Experience and Digital Technologies.	DE120121	8/1/2012
		Speechwriter	DE120130	8/13/2012
		Project Coordinator for Digital Media.	DE130003	11/15/2012
		Press Secretary	DE130021	3/7/2013
		Deputy Press Secretary for Clean Energy.	DE130022	3/21/2013
		Managing Editor	DE130073	6/27/2013
	Office of Science	Special Advisor	DE130041	5/21/2013
	Office of the Deputy Secretary	Special Assistant	DE130038	5/17/2013
	Office of the Secretary	Special Assistant (3)	DE120119	7/20/2012
			DE130042	5/15/2013
			DE130067	6/28/2013
	Office of the Under Secretary	Special Assistant for Finance	DE120127	8/22/2012
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administrator	Director of Scheduling and Advance.	EP130017	4/17/2013
		White House Liaison	EP130029	6/14/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Senior Advisor	EP130019	5/1/2013
		Deputy Associate Administrator for Intergovernmental Relations.	EP130024	5/29/2013
	Office of the Associate Administrator for External affairs and Environmental Education.	Deputy Associate Administrator for External Affairs and Environmental Education.	EP120042	8/13/2012
		Press Secretary	EP130011	1/24/2013
		Deputy Press Secretary	EP130015	4/22/2013
		Director for Internal Communications.	EP130030	6/19/2013
EXPORT-IMPORT BANK	Office of Communications	Speechwriter	EB120004	7/6/2012
		Senior Vice President, Communications.	EB120005	8/29/2012
	Office of the Chairman	Chief of Staff	EB130003	5/6/2013
FARM CREDIT ADMINISTRATION	Office of Congressional and Public Affairs.	Associate Director of Congressional Affairs.	FL130003	6/11/2013
FEDERAL COMMUNICATIONS COMMISSION.	Office of Media Relations	Public Affairs Specialist	FC120014	9/25/2012
	Office of the Chairwoman	Special Assistant	FC130004	5/22/2013
FEDERAL ENERGY REGULATORY COMMISSION.	Office of the Chairman	Secretary	DR130003	12/20/2012
FEDERAL HOUSING FINANCE AGENCY.	Federal Housing Finance Agency	Confidential Assistant	HA130001	1/16/2013
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.	Office of the Commissioner	Attorney Advisor (General)	FR120001	8/17/2012
FEDERAL TRADE COMMISSION	Office of the Chairman	Confidential Assistant	FT130004	4/15/2013
GENERAL SERVICES ADMINISTRATION.	Northwest/Arctic Region	Special Assistant	GS120027	9/21/2012
	Office of Communications and Marketing.	Deputy Associate Administrator for Media Affairs.	GS130007	6/10/2013
		Press Secretary	GS130008	6/10/2013
	Office of Congressional and Intergovernmental Affairs.	Deputy Associate Administrator for Policy.	GS130002	4/4/2013
	Office of the Administrator	Deputy Chief of Staff (2)	GS120024	8/14/2012
			GS130005	5/1/2013
		Deputy Press Secretary	GS120026	9/21/2012
		Press Secretary	GS120023	7/12/2012
		Senior Advisor	GS130012	6/17/2013
		Special Assistant	GS130004	4/23/2013
		White House Liaison	GS130011	6/10/2013
	Public Buildings Service	Chief of Staff	GS130010	5/16/2013
		Special Assistant	GS130013	6/17/2013
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Administration for Community Living.	Special Assistant	DH120130	8/10/2012
	Office for Civil Rights	Special Assistant	DH120141	9/26/2012
	Office of Intergovernmental and External Affairs.	Director of Consumer Outreach	DH130066	5/17/2013
		Director of Provider Outreach	DH130089	6/17/2013
		Regional Director, Atlanta, Georgia, Region IV.	DH120122	7/24/2012
		Regional Director, Kansas City, Missouri, Region VII.	DH130041	2/19/2013
		Senior Advisor	DH120143	10/2/2012
		Special Assistant	DH130069	6/3/2013
	Office of the Assistant Secretary for Health.	Confidential Assistant	DH120132	9/6/2012
	Office of the Assistant Secretary for Legislation.	Special Assistant	DH130036	2/8/2013
	Office of the Assistant Secretary for Planning and Evaluation.	Director of Coverage Policy (Office of Health Reform).	DH130018	1/17/2013
	Office of the Assistant Secretary for Preparedness and Response.	Confidential Assistant	DH130049	3/18/2013
	Office of the Assistant Secretary for Public Affairs.	Communications Director for Human Services.	DH130007	11/9/2012
		Confidential Assistant	DH130012	12/7/2012
		Director of Public Health Initiatives	DH130060	4/30/2013
		Press Secretary	DH130054	4/16/2013
		Rollout Director	DH130061	4/18/2013
		Senior Advisor for Strategic Planning.	DH130038	2/15/2013
		Senior Speechwriter	DH130040	2/15/2013
	Office of the Deputy Secretary	Special Assistant	DH130053	4/4/2013
	Office of the General Counsel	Special Assistant	DH130026	3/5/2013
	Office of the Secretary	Confidential Assistant	DH130020	1/24/2013
		Deputy Director for Scheduling and Advance.	DH130071	5/31/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
		Director of Scheduling and Advance.	DH130059	4/12/2013
		Special Assistant	DH130058	4/12/2013
		White House Liaison for Political Personnel, Boards and Commissions.	DH130091	6/13/2013
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Director of Individual and Community Preparedness.	DM130059	4/5/2013
	Office of Assistant Secretary for Legislative Affairs.	Chief of Staff	DM120181	10/4/2012
	Office of the Assistant Secretary for Intergovernmental Affairs.	Confidential Assistant	DM130009	10/17/2012
		Intergovernmental Affairs Coordinator.	DM130061	4/5/2013
	Office of the Assistant Secretary for Policy.	Senior Business Liaison	DM120152	8/17/2012
		Confidential Assistant	DM120169	9/11/2012
		Chief of Staff	DM130011	10/17/2012
	Office of the Assistant Secretary for Public Affairs.	Public Affairs and Strategic Communications Assistant.	DM120151	7/30/2012
		Special Projects Coordinator	DM120153	8/1/2012
		News Media Specialist	DM120154	8/1/2012
		Director of Communications and Advisor.	DM120156	8/1/2012
	Office of the Chief of Staff	Deputy Chief of Staff	DM130052	4/15/2013
		Special Assistant (3)	DM120158	8/1/2012
			DM130115	6/3/2013
			DM130137	6/25/2013
	Office of the Executive Secretary for Operations and Administration.	Secretary—Briefing Book Coordinator.	DM120162	8/14/2012
	Office of the General Counsel	Special Assistant	DM130029	1/23/2013
	Office of the Under Secretary for National Protection and Programs Directorate.	Confidential Assistant	DM130107	5/16/2013
		Cyber Security Strategist	DM130098	5/3/2013
		Special Assistant	DM120155	7/30/2012
	Office of the Under Secretary for Science and Technology.	Senior Liaison Officer	DM130043	2/22/2013
		Special Assistant for Science and Technology.	DM130110	5/30/2013
	U.S. Citizenship and Immigration Services.	Special Assistant	DM130041	2/15/2013
	U.S. Customs and Border Protection.	Policy Advisor	DM130080	4/15/2013
		Senior Advisor for Strategic Communications.	DM120145	7/10/2012
		Special Advisor	DM130024	12/12/2012
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Housing	Policy Advisor	DU130013	5/17/2013
	Office of Policy Development and Research.	Senior Advisor for Housing Finance.	DU130015	5/30/2013
	Office of Public Affairs	Assistant Press Secretary	DU120043	8/1/2012
		Chief External Affairs Officer/General Deputy Assistant Secretary for Public Affairs.	DU120048	9/14/2012
		Press Secretary	DU130008	4/2/2013
		Senior Speechwriter	DU130028	6/27/2013
	Office of the Chief Human Capital Officer.	Director, Office of Executive Scheduling and Operations.	DU130014	5/16/2013
	Office of the Deputy Secretary	Senior Advisor	DU120044	9/5/2012
	Office of the General Counsel	Special Assistant	DU120045	8/21/2012
		Senior Counsel	DU130027	6/27/2013
	Office of the Secretary	Senior Advisor for Housing and Services.	DU130007	2/20/2013
		Senior Advisor for Housing Finance.	DU130017	5/31/2013
DEPARTMENT OF THE INTERIOR	Assistant Secretary—Fish and Wildlife and Parks.	Senior Advisor for Fish, Wildlife and Parks.	DI130041	6/26/2013
	Assistant Secretary—Indian Affairs	Senior Advisor-Indian Affairs	DI130024	6/4/2013
	Assistant Secretary—Land and Minerals Management.	Special Assistant	DI120060	8/20/2012
	Assistant Secretary—Policy, Management and Budget.	Special Assistant for Policy, Management and Budget.	DI130023	5/9/2013
	Assistant Secretary—Water and Science.	Counselor-Water and Science	DI130036	6/7/2013
	Bureau of Land Management	Advisor	DI120061	8/16/2012
	National Park Service	Advisor, National Park Service	DI130019	4/11/2013
		Assistant Coordinator for the Centennial.	DI130018	4/11/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Congressional and Legislative Affairs.	Deputy Director	DI130011	3/4/2013
		Senior Counsel	DI130031	5/22/2013
	Secretary's Immediate Office	Director of Scheduling and Advance.	DI130042	6/26/2013
		Press Assistant (2)	DI130014	3/21/2013
			DI130022	4/22/2013
		Press Secretary	DI130007	1/15/2013
		Special Assistant (2)	DI130015	3/27/2013
			DI130035	6/7/2013
		Special Assistant for Advance (2)	DI120065	8/31/2012
			DI130010	2/22/2013
		Special Assistant for Scheduling	DI120064	8/31/2012
DEPARTMENT OF JUSTICE	Antitrust Division	Senior Counsel	DJ130066	6/13/2013
	Civil Division	Counsel (2)	DJ120095	9/11/2012
			DJ120102	10/2/2012
	Civil Rights Division	Senior Counsel (2)	DJ120098	9/11/2012
			DJ130013	11/20/2012
	Community Relations Service	Senior Counsel	DJ130029	2/6/2013
	Criminal Division	Senior Counsel	DJ130051	5/1/2013
	Environment and Natural Resources Division.	Special Assistant and Counsel	DJ120097	9/11/2012
	Executive Office for United States Attorneys.	Counsel	DJ130035	2/27/2013
	Office of Legal Policy	Researcher	DJ120089	8/20/2012
	Office of Public Affairs	Deputy Speechwriter	DJ130058	6/4/2013
		Press Assistant	DJ130006	10/31/2012
		Public Affairs Specialist (2)	DJ120103	10/2/2012
			DJ130004	10/19/2012
	Office of the Associate Attorney General.	Counsel and Chief of Staff	DJ120096	9/11/2012
	Office of the Attorney General	Director of Advance	DJ130069	6/21/2013
		Special Assistant (2)	DJ120079	7/2/2012
			DJ130054	5/16/2013
	Office of the Deputy Attorney General.	Counsel (2)	DJ130034	2/22/2013
			DJ130044	4/9/2013
	Tax Division	Confidential Assistant	DJ130046	4/9/2013
DEPARTMENT OF LABOR	Employment and Training Administration.	Policy Advisor	DL130007	1/25/2013
		Senior Policy Advisor	DL120070	7/10/2012
	Mine Safety and Health Administration.	Senior Policy Advisor	DL120075	8/31/2012
	Occupational Safety and Health Administration.	Chief of Staff	DL130032	5/21/2013
		Senior Policy Advisor	DL130030	5/21/2013
	Office of Congressional and Intergovernmental Affairs.	Deputy Director of Intergovernmental Affairs.	DL130009	2/5/2013
		Legislative Assistant	DL130008	2/5/2013
		Legislative Officer	DL130006	2/5/2013
		Regional Representative	DL130016	4/11/2013
		Senior Counselor	DL120087	10/2/2012
		Senior Legislative Officer	DL130014	3/15/2013
	Office of Disability Employment Policy.	Chief of Staff	DL130024	5/21/2013
	Office of Public Affairs	Speech Writer	DL130011	2/8/2013
	Office of the Assistant Secretary for Policy.	Senior Policy Advisor	DL130023	4/18/2013
	Office of the Deputy Secretary	Policy Advisor	DL130018	4/4/2013
	Office of the Secretary	Chief Economist	DL130010	2/8/2013
		Deputy Director of Scheduling and Advance.	DL130013	3/22/2013
		Executive Assistant	DL130012	3/13/2013
		Special Assistant (2)	DL120072	7/25/2012
			DL130019	5/1/2013
		White House Liaison	DL130029	5/7/2013
	Office of the Solicitor	Senior Counselor	DL130015	5/17/2013
		Special Counsel	DL130036	6/14/2013
	Veterans Employment and Training Service.	Chief of Staff	DL130035	6/21/2013
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Chief of Staff	Special Assistant	NN120061	7/12/2012
		White House Liaison	NN120071	10/4/2012
	Office of Legislative and Intergovernmental Affairs.	Executive Officer	NN120068	10/4/2012
NATIONAL ENDOWMENT FOR THE ARTS.	National Endowment for the Arts	Confidential Assistant	NA130001	5/31/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
OFFICE OF MANAGEMENT AND BUDGET.	Communications	Press Secretary	BO130007	1/11/2013
	National Security Programs	Confidential Assistant	BO120030	7/6/2012
	Office of the Director	Assistant	BO130016	5/9/2013
		Special Assistant	BO130022	6/24/2013
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Intergovernmental Public Liaison.	Public Engagement Specialist	QQ120004	7/20/2012
	Office of Legislative Affairs	Associate Director (Legislative Affairs).	QQ130003	6/19/2013
	Office of Public Affairs	Special Assistant for Strategic Communications.	QQ130001	3/26/2013
	Office of the Director	Senior Policy Analyst	QQ120005	8/10/2012
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Special Assistant	PM120019	8/22/2012
	Office of the General Counsel	Deputy General Counsel for Policy	PM130007	4/4/2013
OFFICE OF SCIENCE AND TECHNOLOGY POLICY.	Office of Science and Technology Policy.	Policy Advisor	TS120005	8/15/2012
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of the Ambassador	Confidential Assistant	TN130003	6/3/2013
		Deputy Chief of Staff	TN130004	6/18/2013
PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS.	President's Commission on White House Fellowships.	Special Assistant	WH120003	8/23/2012
		Associate Director (2)	WH130001	10/19/2012
			WH130002	11/21/2012
SECURITIES AND EXCHANGE COMMISSION.	Division of Investment Management.	Confidential Assistant	SE130002	1/11/2013
	Division of Risk, Strategy, and Financial Innovation.	Confidential Assistant	SE130001	11/6/2012
	Office of the Chairman	Deputy Director, Office of Legislative and Intergovernmental Affairs.	SE120005	7/26/2012
		Confidential Assistant (3)	SE130003	2/20/2013
			SE130004	2/20/2013
			SE130005	4/30/2013
SELECTIVE SERVICE SYSTEM	Office of the Director	Chief of Staff	SS120004	9/21/2012
SMALL BUSINESS ADMINISTRATION.	Office of Capital Access	Deputy Associate Administrator for Capital Access.	SB120034	8/16/2012
		Special Advisor for Capital Access	SB130005	2/15/2013
	Office of Communications and Public Liaison.	Special Assistant	SB120038	9/14/2012
		Deputy Press Secretary for the Office of Communications and Public Liaison.	SB130002	1/16/2013
	Office of Congressional and Legislative Affairs.	Special Advisor	SB130015	6/26/2013
	Office of Entrepreneurial Development.	Director of Clusters and Skills Initiatives.	SB120027	7/13/2012
	Office of Field Operations	Regional Administrator, Region I, Boston, Massachusetts.	SB130013	5/17/2013
		Regional Administrator, Region III, Philadelphia, Pennsylvania.	SB120037	8/31/2012
		Regional Administrator, Region VIII, Denver, Colorado.	SB130012	5/2/2013
		Special Advisor for Field Operations.	SB130009	3/29/2013
	Office of International Trade	Senior Advisor for International Trade.	SB120035	8/20/2012
	Office of Investment	Special Assistant for the Associate Administrator for Investment and Innovation.	SB130004	5/6/2013
	Office of the Administrator	Senior Advisor	SB120028	7/12/2012
		Special Advisor	SB120033	8/2/2012
		Policy Advisor (2)	SB120032	8/10/2012
			SB130008	3/8/2013
		Special Assistant	SB130011	5/3/2013
DEPARTMENT OF STATE	Bureau of Legislative Affairs	Senior Advisor	DS120097	7/6/2012
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Senior Advisor	DS120098	7/12/2012
	Office of the Under Secretary for Arms Control and International Security Affairs.	Staff Assistant	DS120096	7/19/2012
	Office of the Under Secretary for Public Diplomacy and Public Affairs.	Staff Assistant	DS120090	7/20/2012
	Bureau of Legislative Affairs	Legislative Management Officer	DS120103	8/3/2012
	Foreign Policy Planning Staff	Special Assistant (2)	DS120111	8/23/2012
			DS120112	8/23/2012

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Global Food Security	Special Assistant	DS120120	9/13/2012
	Office of the Global Women's Issues.	Staff Assistant	DS120117	9/21/2012
	Bureau for Education and Cultural Affairs.	Special Assistant	DS120121	10/4/2012
	Bureau of Economic and Business Affairs.	Staff Assistant	DS120122	10/11/2012
	Bureau of Legislative Affairs	Legislative Management Officer (2)	DS120118	10/14/2012
			DS130002	10/15/2012
	Office of the Chief of Protocol	Protocol Officer	DS130018	11/20/2012
	Office of International Information Programs.	Senior Advisor	DS120127	11/27/2012
	Bureau of Energy Resources	Staff Assistant	DS130013	11/27/2012
	Office of the Chief of Protocol	Public Affairs Specialist	DS130020	12/3/2012
	Bureau of East Asian and Pacific Affairs.	Deputy Assistant Secretary	DS130027	1/11/2013
	Bureau of Public Affairs	Deputy Assistant Secretary	DS130051	3/7/2013
	Bureau of International Organizational Affairs.	Senior Advisor	DS130025	3/26/2013
	Foreign Policy Planning Staff	Senior Advisor	DS130056	3/26/2013
	Office of the Counselor	Senior Advisor	DS130026	4/26/2013
	Office of the Secretary	Special Assistant	DS130052	5/2/2013
		Staff Assistant (2)	DS130062	5/2/2013
			DS130063	5/2/2013
	Foreign Policy Planning Staff	Chief Speechwriter	DS130064	5/2/2013
	Office of the Chief of Protocol	Assistant Chief of Protocol (Visits)	DS130065	5/9/2013
		Senior Protocol Officer	DS130070	5/17/2013
		Protocol Officer (Visits)	DS130073	5/21/2013
	Office of the Secretary	Senior Advisor	DS130075	5/30/2013
	Office of the Under Secretary for Management.	White House Liaison	DS130076	5/31/2013
	Bureau of Public Affairs	Deputy Spokesperson	DS130089	6/13/2013
	Bureau of Legislative Affairs	Legislative Management Officer	DS130091	6/14/2013
	Foreign Policy Planning Staff	Speechwriter (3)	DS130094	6/28/2013
			DS130095	6/28/2013
			DS130096	6/28/2013
TRADE AND DEVELOPMENT AGENCY.	Office of the Director	Public Affairs Specialist	TD130003	5/1/2013
DEPARTMENT OF TRANSPORTATION.	Administrator	Director, Office of Congressional and Public Affairs.	DT120079	8/6/2012
	Secretary	Special Assistant for Scheduling and Advance.	DT130008	12/10/2012
	Assistant Secretary for Governmental Affairs.	Associate Director for Governmental Affairs.	DT130011	2/27/2013
	Secretary	Director of Scheduling and Advance.	DT130012	2/27/2013
	Assistant Secretary for Budget and Programs.	Senior Advisor for Budget and Programs.	DT130014	4/11/2013
	Public Affairs	Deputy Director of Public Affairs	DT130017	5/7/2013
	Administrator	Director of Communications	DT130020	5/7/2013
	Assistant Secretary for Governmental Affairs.	Director of Governmental Affairs	DT130021	5/10/2013
	Administrator	Director of Communications	DT130025	6/25/2013
	Office of Congressional Affairs	Director of Congressional Affairs	DT130027	6/25/2013
DEPARTMENT OF THE TREASURY.	Under Secretary for Domestic Finance.	Special Assistant	DY120101	7/11/2012
	Assistant Secretary for Financial Markets.	Senior Policy Analyst	DY120106	7/13/2012
	Assistant Secretary for Financial Institutions.	Special Assistant	DY120118	8/23/2012
	Assistant Secretary for Financial Institutions.	Policy Analyst	DY120120	9/7/2012
	Under Secretary for Domestic Finance.	Senior Advisor	DY130014	12/21/2012
	Assistant Secretary (Public Affairs)	Spokesperson	DY130020	1/23/2013
	Office of the Secretary of the Treasury.	Deputy Executive Secretary	DY130019	2/2/2013
		Senior Advisor	DY130021	2/22/2013
		Special Assistant (2)	DY130027	3/21/2013
			DY130026	3/25/2013
		Associate Director, Scheduling and Advance.	DY130041	5/24/2013
	Assistant Secretary for Financial Institutions.	Policy Advisor	DY130023	3/7/2013

Agency name	Organization name	Position title	Authorization No.	Effective date
	Assistant Secretary (Public Affairs)	Media Affairs Specialist	DY130025	3/21/2013
	Assistant Secretary (Public Affairs)	Spokesperson (2)	DY130032	4/23/2013
			DY130033	4/23/2013
		Media Affairs Specialist	DY130062	6/25/2013
	Assistant Secretary (Legislative Affairs).	Special Assistant	DY130056	6/7/2013
	Assistant Secretary (Tax Policy)	Senior Advisor	DY130061	6/17/2013
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of the Chairman	Staff Assistant (Legal) (2)	TC120007	8/14/2012
			TC120011	9/11/2012
		Confidential Assistant.	TC120010	9/11/2012
	Office of Commissioner Pinkert	Executive Assistant	TC120009	9/11/2012
	Office of Commissioner Broadbent	Attorney-Adviser	TC130002	5/7/2013
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant	DV120061	7/13/2012
	Office of the Secretary and Deputy	Special Assistant	DV130007	10/12/2012
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant	DV130025	3/12/2013
	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV130026	4/18/2013
	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV130030	5/14/2013
	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant	DV130050	6/26/2013

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–02945 Filed 2–12–14; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71511; File No. SR–ICC–2014–01]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Collateral and Cash Management Fee Changes

February 7, 2014.

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 February 3, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to implement changes to the method by which ICC charges Clearing Participants for collateral and cash management services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC 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

The proposed revisions are intended to implement changes to the method by which ICC charges Clearing Participants for collateral and cash management services (e.g., custody services for collateral; investment/placement of cash deposits; establishing prearranged and highly reliable funding arrangements to allow conversion of non-cash collateral into cash; and managing collateral deposits to ensure all liquidity requirements are met). Such proposed fee changes are the result of changes to ICC's collateral and cash management services that were made in response to new U.S. Commodity Futures Trading Commission (''CFTC'') regulations implementing international standards related to liquidity requirements. The proposed changes are described in detail as follows.

With respect to collateral deposited by Clearing Participants with ICC for the purposes of satisfying margin and Guaranty Fund requirements, ICC will impose a 5 basis point (bp) fee (annualized) on U.S. Treasury securities balances (based on par value). This fee will be calculated and charged monthly. In addition, ICC will retain a portion of interest earned on cash balances, net of cash management expenses. The charges will apply to both house and client

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

accounts and ICC proposes to make such changes effective beginning on February 3, 2014.

ICC believes the proposed rule changes are consistent with the requirements of the Act including Section 17A of the Act.[5] More specifically, the proposed rule changes establish or change a member due, fee or other charge imposed by ICC under Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(f)(2)[7] thereunder. ICC believes the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(D),[8] because the proposed collateral and cash management fee changes apply equally to all market participants and therefore the proposed changes provide for the equitable allocation of reasonable dues, fees and other charges among participants. As such, the proposed changes are appropriately filed pursuant to Section 19(b)(3)(A)[9] of the Act and paragraph (f)(2) of Rule 19b–4 thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed collateral and cash management fee changes apply consistently across all market participants and the implementation of the proposed collateral and cash management fee changes does not preclude the implementation of similar fee changes by other market participants. Therefore, ICC does not believe the collateral and cash management fee changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(2)[11] thereunder because, by implementing changes to the method by which ICC charges Clearing Participants for collateral and cash management services, ICC is establishing or changing a due, fee, or other charge applicable only to a member. 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.[12]

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–ICC–2014–01 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–ICC–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2014–01 and should be submitted on or before March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03130 Filed 2–12–14; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71510; File No. SR–CBOE–2014–011]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a CBOE Stock Exchange Fee for Qualification Examination Waiver Requests

February 7, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2014 Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to amend the CBOE Stock Exchange (''CBSX'') Fees Schedule to establish a fee for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

qualification examination waiver requests. CBSX is CBOE's stock trading facility. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/About CBOE/CBOELegalRegulatory Home.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 3.6A, Interpretation and Policy .05, authorizes the Exchange, in exceptional cases and where good cause is shown, to waive qualification examinations and accept other standards as evidence of an applicant's qualification for registration. This authority is to be exercised in exceptional cases and where good cause is shown by the applicant. The rule further states that advanced age or physical infirmity, will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.

The Exchange has entered into a regulatory services agreement (''RSA'') with the Financial Industry Regulatory Authority, Inc. (''FINRA'') pursuant to which FINRA will process qualification examination waiver requests on behalf of the Exchange and CBSX (''Waiver Requests'').[3] Under the RSA, CBSX Trading Permit Holders (''TPHs'') and persons associated with CBSX TPHs seeking a waiver of a qualification examination will submit a Waiver Request to FINRA.[4] FINRA will process all Waiver Requests submitted by CBSX TPHs and their associated persons, whether the Waiver Request is for a FINRA examination or a non-FINRA examination (e.g., the Series 56 examination).

FINRA will review each Waiver Request based on guidelines approved by the Exchange and provide the Exchange with a recommendation regarding the disposition of the Waiver Request. The Exchange will make the final decision regarding whether or not to grant or deny a Waiver Request.[5] FINRA will maintain files and records made, collected or otherwise created by FINRA in the course of performing services under the RSA. Such files and records shall include, but not be limited to, FINRA Waiver Request disposition recommendations and the basis for its recommendations,[6] CBOE decisions and the basis for its decisions,[7] and letters sent to requesting CBSX TPHs communicating CBOE's decisions.

The Exchange will pay a fee to FINRA under the RSA for each Waiver Request of a non-FINRA examination (e.g., the Series 56 examination) processed by FINRA. The Exchange proposes to charge CBSX TPHs a fee of $200 for each Waiver Request of a non-FINRA examination processed by FINRA. The proposed fee would help the Exchange recoup its costs under the RSA.

The proposed fee would be effective on February 3, 2014.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed fee is reasonable because it would help the Exchange recoup its costs in engaging FINRA to process Waiver Requests of non-FINRA examinations by CBSX TPHs and their associated persons. The Exchange believes the proposed fee is equitable and not unfairly discriminatory because it would apply equally to all CBSX TPHs who submit Waiver Requests of non-FINRA examinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed fee will impose an unnecessary burden on intramarket competition because it would apply equally to all CBSX TPHs who submit Waiver Requests of non-FINRA examinations. The Exchange does not believe that the proposed fee will impose an unnecessary burden on intermarket competition because the fee would only apply to CBSX TPHs.

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[11] and paragraph (f) of Rule 19b–4[12] 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

[3] CBOE Rule 15.9(b) authorizes the Exchange to enter into agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934.

[4] Currently, Waiver Requests must be submitted to FINRA through the FINRA Firm Gateway.

[5] Notwithstanding the RSA, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities.

[6] The recommendation provided to CBOE will include a detailed explanation and justification as to whether to grant or deny the Waiver Request, and in those cases where the recommendation is to grant a waiver, the reasoning shall support why FINRA believes it is an exceptional case and that good cause has been shown to warrant the granting of the Waiver Request.

[7] CBOE will notify FINRA in writing of its final decision regarding whether to grant or deny a Waiver Request, including any additional information regarding such decision.

The Commission expects CBOE to document in writing its rationale for any decision when CBOE determines not to follow FINRA's recommendation.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *Id.* [sic]

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–011 and should be submitted on or before March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03182 Filed 2–12–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71507; File No. SR–NASDAQ–2014–011]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for NASDAQ Basic

February 7, 2014.

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 January 27, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing modify fees for the NASDAQ Basic data product. The proposal, which modifies monthly fees, is effective for the month of January 2014 and subsequent months. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

NASDAQ Basic is a proprietary data product that provides best bid and offer information from the NASDAQ Market Center and last sale transaction reports from the NASDAQ Market Center and from the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''). As such, NASDAQ Basic provides a subset of the ''core'' quotation and last sale data provided by securities information processors (''SIPs'') under the CQ/CT Plan and the NASDAQ UTP Plan. In this filing, NASDAQ is proposing to (i) increase the Subscriber fees charged with respect to ''Professional'' Subscribers to the product, for the first time since the introduction of the product in 2009, (ii) introduce a new enterprise license for Professional Subscribers; and (iii) add rules to allow ''netting,'' in certain instances, by Subscribers with multiple means of access to NASDAQ Basic, in order to reduce the total number of Subscribers for which a fee will be charged.

NASDAQ Basic contains three separate components, which may be purchased individually or in combination: (i) NASDAQ Basic for NASDAQ, which contains the best bid and offer on the NASDAQ Market Center and last sale transaction reports for NASDAQ and the FINRA/NASDAQ TRF for NASDAQ-listed stocks, (ii) NASDAQ Basic for NYSE, which covers NYSE-listed stocks, and (iii) NASDAQ Basic for NYSE MKT, which covers stocks listed on NYSE MKT and other listing venues whose quotes and trade reports are disseminated on Tape B.[3]

The fee structure for NASDAQ Basic features a fee for Professional Subscribers and a reduced fee for Non-Professional Subscribers.[4] The current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ is modifying the text of Rule 7047 to make it clear that NASDAQ Basic for NYSE MKT includes information for all Tape B listing venues and to use consistent terminology to describe the three data elements of NASDAQ Basic throughout the rule.

[4] A ''Non-Professional Subscriber'' is ''a natural person who is not (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser''

Continued

monthly fees for Non-Professional Subscribers, which are not being modified, are $0.50 per Subscriber for NASDAQ Basic for NASDAQ, $0.25 per Subscriber for NASDAQ Basic for NYSE, and $0.25 per Subscriber for NASDAQ Basic for NYSE MKT. The current monthly fees for Professional Subscribers are $10 per Subscriber for NASDAQ Basic for NASDAQ, $5 per Subscriber for NASDAQ Basic for NYSE, and $5 per Subscriber for NASDAQ Basic for NYSE MKT. As discussed in more detail below, NASDAQ is proposing to increase the Professional Subscriber fees to $13, $6.50, and $6.50, respectively. For use cases that do not require a monthly subscription for unlimited usage, there is a Per Query option, with a fee of $0.0025 for NASDAQ Basic for NASDAQ, $0.0015 for NASDAQ Basic for NYSE, and $0.0015 for NASDAQ Basic for NYSE MKT.

Distributors [5] of NASDAQ Basic may also be assessed a monthly Distributor Fee. The fee is $1,500 per month for either internal or external distribution; however, a credit for Subscriber or Per Query fees may be applied against the Distributor Fee at the Distributor's request.

As an alternative to monthly Subscriber fees for Non-Professional Subscribers, NASDAQ also offers an enterprise license under which a broker-dealer may distribute NASDAQ Basic to an unlimited number of Non-Professional Subscribers with whom the broker-dealer has a brokerage relationship at a rate of $100,000 per month (as well as the applicable monthly Distributor fee). In addition, a Distributor of data derived from NASDAQ Basic (but not NASDAQ Basic itself) may pay a fee of $1,500 per month (plus the applicable monthly Distributor fee) to distribute the derived data to an unlimited number of Non-Professional Subscribers. This type of Distributor will typically distribute data to a large number of downstream customers through web-based applications.

The proposed increase in Professional Subscriber fees would constitute the first such increase since NASDAQ Basic was introduced in 2009. Since that time, NASDAQ has continually enhanced the product through capacity upgrades, in keeping with increases in demand for the product; during this period, the network capacity for NASDAQ Basic has increased from a 15 Mb feed to the current 84 Mb feed. Additionally, NASDAQ has enhanced the product in numerous respects. These have included the addition of messages to indicate the start and end time of the NASDAQ Market Center's system day and the end of regular trading hours; a new IPO message for NASDAQ-listed securities to relay the quotation release time as well as the IPO price to be used for intraday net change calculations; an enhanced symbol directory with limit up/limit down reference price tiers; dissemination of retail liquidity identifiers under NASDAQ Rule 4780; market-wide circuit breaker decline levels and status information; enhanced sale condition modifiers in accordance with changes made to data disseminated by the SIPs; support for a 4 a.m. start to NASDAQ's trading day; support for single stock trading pauses; latency monitoring; and clearer differentiation between NYSE and NYSE MKT trades in the data stream.

NASDAQ further notes that the professional fees for ''core'' quote and last-sale data provided under the NASDAQ UTP Plan were increased, effective January 2014, from $20 to $23 per Subscriber per month.[6] Similar fees under the CQ/CT Plans are $24 per subscriber per month for securities listed on NYSE MKT and other Tape B securities, and range from $20 to $50 per month for NYSE-listed securities. Accordingly, NASDAQ believes that the change in NASDAQ Basic fees is also warranted as a means of ensuring that the fees for NASDAQ Basic accurately reflect the value of NASDAQ Basic data as a subset of ''core'' data available from the SIPs, thereby avoiding distortions in demand for core data that might result from fees that do not accurately reflect NASDAQ Basic's value.

However, to mitigate the effect of the fee increase on Distributors and Subscribers, NASDAQ is proposing two additional changes. First, NASDAQ is proposing to introduce a net reporting option for Distributors to reduce the overall number of internal Professional Subscribers deemed to be fee liable with respect to ''Display Usage'' of NASDAQ Basic.[7] This option is similar to a net reporting option recently introduced under the NASDAQ UTP Plan.[8] Under the proposed netting rules:

- A Subscriber that receives access to NASDAQ Basic through multiple products controlled by an Internal Distributor will be considered one Subscriber. Thus, if a broker-dealer acts as a Distributor of NASDAQ Basic in multiple forms to its employees, each employee would be considered one Subscriber.
- A Subscriber that receives access to NASDAQ Basic through multiple products controlled by one External Distributor will be considered one Subscriber. Thus, if a broker-dealer arranges for its employees to receive access to multiple NASDAQ Basic products provided by a single vendor, each employee would be considered one Subscriber.
- A Subscriber that receives access to NASDAQ Basic through one or more products controlled by an Internal Distributor and also one or more products controlled by one External Distributor will be considered one Subscriber. Thus, if the broker-dealer provides employees with access through its own product(s) and through products from a single vendor, each employee would still be considered one Subscriber.
- A Subscriber that receives access to NASDAQ Basic through one or more products controlled by an Internal Distributor and also products controlled by multiple External Distributors will be treated as one Subscriber with respect to the products controlled by the Internal Distributor and one of the External Distributors, and will be treated as an additional Subscriber for each additional External Distributor. Thus, a Subscriber receiving products through

as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.'' A ''Professional Subscriber'' is ''any Subscriber other than a Non-Professional Subscriber.'' Although these definitions are currently applicable to Rule 7047 through incorporation by reference, NASDAQ is adding them directly to the rule to enhance its clarity.

[5] The definition of the term ''Distributor'' is being added directly to Rule 7047 to enhance the rule's clarity. The term ''refers to any entity that receives NASDAQ Basic data directly from NASDAQ or indirectly through another entity and then distributes it to one or more Subscribers.'' Distributors may either be ''Internal Distributors'', which are ''Distributors that receive NASDAQ Basic data and then distribute that data to one or more Subscribers within the Distributor's own entity,'' or ''External Distributors'', which are ''Distributors that receive NASDAQ Basic data and then distribute that data to one or more Subscribers outside the Distributor's own entity.''

[6] Securities Exchange Act Release No. 70953 (November 27, 2013), 78 FR 72932 (December 4, 2013) (File No. S7–24–89).

[7] As reflected in a new definition being added to Rule 7047, ''Display Usage'' means ''any method of accessing NASDAQ Basic data that involves the display of such data on a screen or other visualization mechanism for access or use by a natural person or persons.'' Netting does not apply to uses other than Display Usage (*i.e.,* use by an automated device without visual access by natural persons).

[8] Securities Exchange Act Release No. 70953 (November 27, 2013), 78 FR 72932 (December 4, 2013) (File No. S7–24–89).

an Internal Distributor and two External Distributors will be treated as two Subscribers. Put another way, access through an Internal Distributor may be netted against access through one External Distributor, but two External Distributors may not be netted. Distributors benefitting from net reporting must demonstrate adequate internal controls for identifying, monitoring, and reporting all usage. The burden will be on the Distributor to demonstrate that particular instances of netting are justified.

Second, NASDAQ is proposing to offer a new enterprise license for Professional Subscribers. Under the enterprise license, a broker-dealer may distribute NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for NYSE MKT for a flat fee of $365,000 per month; provided, however, that if the broker-dealer obtains the license with respect to usage of NASDAQ Basic provided by an External Distributor that controls display of the product, the fee will be $365,000 per month for up to 16,000 internal Professional Subscribers, plus $2 for each additional internal Professional Subscriber over 16,000.[9] Thus, given the total proposed modified fee of $26 per Subscriber per month for receiving all three components of NASDAQ Basic, the option will reduce costs for broker-dealers with more than 14,038 Internal Subscribers ($365,000 ÷ $26). A broker-dealer that purchases an enterprise license will also be entitled to receive, at no additional charge, access to NASDAQ Last Sale (''NLS'') data for its own stock price and the stock price of up to ten of its competitors or peers, for display use on the broker-dealer's internal Web site. NLS provides, in real time, last sale information for stocks listed on NASDAQ, NYSE, and other listing venues, as reported by the NASDAQ Market Center or reported to the FINRA/NASDAQ TRF.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act[10] in general, and with Sections 6(b)(4) and (5) of the Act[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among recipients of NASDAQ data and is not designed to permit unfair discrimination between them. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. NASDAQ believes that its NASDAQ Basic market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[12]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold at all, it follows that the price at which such data is sold should be set by the market as well. NASDAQ Basic exemplifies the optional nature of proprietary data, since, depending on a customer's specific goals, it may opt to purchase core SIP data or only the subset provided through NASDAQ Basic. Moreover, as discussed in more detail below, the price that NASDAQ is able to charge is constrained by the existence of substitutes in the form of SIP data and competitive products offered by other SROs.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[13]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[14] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ quotation and last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing. As the Commission noted in approving the initial pilot for NASDAQ Basic, all of the information available in NASDAQ Basic is included in the core data feeds made available pursuant to the joint-SRO plans.[15] As the Commission further

[9] The $2 fee is necessary to defray additional costs incurred by NASDAQ when distributing NASDAQ Basic through an External Distributor that controls display of the product, costs which NASDAQ would not otherwise be able to recoup under an enterprise license arrangement.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4), (5).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[13] *NetCoalition I,* at 535.

[14] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

[15] Securities Exchange Act Release No. 12425 (March 16, 2009), 74 FR 12423, 12425 (March 24, 2009) (SR–NASDAQ–2008–102).

determined, ''the availability of alternatives to NASDAQ Basic significantly affect the terms on which NASDAQ can distribute this market data. In setting the fees for its NASDAQ Basic service, NASDAQ must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data.'' [16] Thus, to the extent that the fees for core data have been established as reasonable under the Act, it follows that the fees for NASDAQ Basic are also reasonable, since charging unreasonably high fees would cause market participants to rely solely on core data or purchase proprietary products offered by other exchanges rather than purchasing NASDAQ Basic.

Moreover, as discussed in the order approving the initial pilot, and as further discussed below in NASDAQ's Statement on Burden on Competition, data products such as NASDAQ Basic are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The proposed changes do not alter the reasonableness of the fees for NASDAQ Basic. Although the per subscriber fees for professional users of NASDAQ Basic are increasing, such fees continue to reflect the value of NASDAQ Basic as a subset of the data provided through core data products.[17] Moreover, the fees in question have not changed since NASDAQ Basic's introduction in 2009, and since that time, numerous enhancements have been made to the product, as described above in the section of the proposed rule change discussing its purpose. In addition, the proposed enterprise license for Professional Subscribers and the proposed netting rules will provide means to mitigate the effect of the fee increase.

The changed fees for NASDAQ Basic also continue to reflect an equitable allocation and continue not to be unfairly discriminatory, because NASDAQ Basic is a voluntary product for which market participants can readily substitute core data feeds that provide additional quotation and last sale information not available through NASDAQ Basic. Accordingly, NASDAQ is constrained from pricing the product in a manner that would be inequitable or unfairly discriminatory. The distinction between fees for Professional and Non-Professional Subscribers is consistent with the distinction made under fees for core data, and the applicable fees are lower than applicable fees for core data to reflect the lesser quantum of data made available. Moreover, the proposed enterprise license will help to ensure that fees for professional users are not inequitable or unfairly discriminatory, because they will be subject to limitations that will enable broker-dealers with large numbers of subscribers to moderate the fees that they would otherwise be required to pay. The proposed netting feature will also moderate fees by limiting the extent to which a Subscriber is charged for multiple uses of the data.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price NASDAQ Basic is constrained by (1) competition among exchanges, other trading platforms, and TRFs that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary data.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the TRF data component of NASDAQ Basic, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction executions and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs.[18] The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[19] In NASDAQ's case, it is costly to build and

[16] *Id.* at 12425.

[17] Professional Subscriber fees for core data under all of the SIP plans range from $67 to $97 per month, while Professional Subscriber fees for all three components of NASDAQ Basic would be $26 per month.

[18] A complete explanation of the pricing dynamics associated with joint products is presented in a study that NASDAQ originally submitted to the Commission in SR–NASDAQ–2011–010, and which is also submitted as Exhibit 3 to this filing. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[19] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[20] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NASDAQ Basic that may be distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control a means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Charles Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NASDAQ Basic can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the data through their brokerage firm or other distribution sources. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create exchange data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products. Similarly, the inclusion of trade reporting data in a product such as NASDAQ Basic may assist in attracting customers to the product, thereby assisting in covering the additional costs associated with operating and regulating a TRF.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an unreasonable increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce

[20] It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NASDAQ Basic, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in similar products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Markit aggregates and disseminates data from over 50 brokers and multilateral trading facilities.[21]

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.[22] Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other[23] and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides substantial pricing discipline for proprietary data products that are a subset of the consolidated data stream. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as quotation and last sale data) that is simply a subset of the consolidated data. The availability provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for non-core ''sub-set'' products such as NASDAQ Basic is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS. In June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Similarly, the enterprise license and netting option being offered for NASDAQ Basic through this proposed rule change reflects a means by which the overall cost of the product is limited in accordance with the existence of competitive alternatives, including both core and proprietary data.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NASDAQ Basic would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NASDAQ Basic data revenues, the value of NASDAQ Basic as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and

[21] *http://www.markit.com/en/products/data/boat/boat-boat-data.page.*

[22] The low cost exit of two TRFs from the market is also evidence of a contestible market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

[23] It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for over 10% of all over-the-counter volume in NMS stocks. In addition, FINRA has announced plans to update its Alternative Display Facility, which is also able to receive over-the-counter trade reports. *See* Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (August 1, 2013) (SR–FINRA–2013–031).

reported to the FINRA/NASDAQ TRF and the value of its other data products.

Competition has also driven NASDAQ continually to improve its data offerings and to cater to customers' data needs. The NASDAQ Basic product itself is a product of this competition, offering a subset of core data to users that may not wish to receive or pay for all consolidated data. Moreover, as detailed in the section of this proposed rule change discussing its purpose, NASDAQ has made continual enhancements to the NASDAQ Basic product to ensure that it remains an attractive offering to its customers. Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for professional usage of NASDAQ Basic have hitherto remained flat.

The existence of numerous alternatives to NASDAQ Basic, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NASDAQ Basic product in the marketplace demonstrates the consistency of these fees with applicable statutory standards. Likewise, the fee changes proposed herein will be subject to these same competitive forces. If the proposed fee increase is excessive, or if the proposals for an enterprise license and netting are unattractive to market participants, only NASDAQ will suffer, since its customers will merely migrate to competitive alternatives.

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.[24] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–011 and should be submitted on or before March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03121 Filed 2–12–14; 8:45 am]

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[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71506; File No. SR–BX–2014–008]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Not Charge the Extranet Access Fee

February 7, 2014.

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 January 31, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to not charge the extranet access fee (''Extranet Access Fee'') set forth in BX Rule 7025.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are bracketed.[3]

* * * * *

7025. Extranet Access Fee

Extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall *not* be assessed a monthly access fee [of $1,000] per client organization Customer Premises Equipment (''CPE'') Configuration. [If an extranet provider uses multiple CPE Configurations to provide market data feeds to any client organization, the monthly fee shall apply to each such CPE Configuration.] For purposes of this Rule 7025, the term ''Customer Premises Equipment Configuration'' shall mean

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rules of NASDAQ OMX BX, Inc. found at *http://nasdaqomxbx.cchwallstreet.com.*

any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to the Exchange market data feeds to a recipient's site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the UTP SIP.

* * * * *

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 is proposing to change the Extranet Access Fee as set forth in BX Rule 7025 so that there is no charge. BX Rule 7025 currently provides that [sic] for extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds to be assessed a monthly access fee of $1,000 per recipient Customer Premises Equipment (''CPE'') Configuration.[4]

Specifically, the Exchange proposes to reduce the Extranet Access Fee from $1,000 per recipient CPE Configuration per month to free. An Extranet Access Fee has been in place since its introduction in 2009[5] and provided for free during the first year of operation. At the end of this period, the initial fee of $750 per recipient CPE Configuration per month remained in place although it was never billed. Since extranet providers have never yet been billed for this fee, the Exchange now proposes to change BX Rule 7025 to reflect that there will be no charge for extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds.

Additionally, because the Exchange has thus far never collected an Extranet Access Fee, it does not intend to charge the $1,000 Extranet Access Fee for January 2014.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. All similarly situated extranet providers that establish an extranet connection with the Exchange to access market data feeds from the Exchange will not be subject to an Extranet Access Fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. No fee is being charged and this applies across all extranet providers and none are compelled to establish a connection with the Exchange to offer access connectivity to market data feeds.

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 Act.[9] 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–BX–2014–008 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–BX–2014–008. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2014–008, and should be submitted on or before March 6, 2014.

[4] *See* Securities Exchange Act Release No. 71197 (December 30, 2013), 79 FR 679 (January 6, 2014) (SR–BX–2013–063). As defined in BX Rule 7025, a ''Customer Premises Equipment Configuration'' means any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to the Exchange market data feeds to a recipient's site.

[5] *See* Securities Exchange Act Release No. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR–BX–2009–005).

[6] The Exchange will not back-bill any extranet providers for extranet connections with the Exchange to offer direct access connectivity to market data feeds.

[7] 15 U.S.C. 78f [sic].

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03128 Filed 2–12–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71513; File No. SR–CBOE–2013–100]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to CBSX Trading Permit Holder Eligibility

February 7, 2014.

I. Introduction

On October 23, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Rule 50.4A to the rules of the CBOE Stock Exchange, LLC (''CBSX'').[3] The proposed rule change was published for comment in the **Federal Register** on November 12, 2013.[4] The Commission received four comment letters on the proposal.[5] CBOE responded to the comments on December 20, 2013.[6] On December 20, 2013, the Commission extended the time period for Commission action to February 10, 2014.[7] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt Rule 50.4A regarding eligibility for CBSX Trading Permit Holders. Proposed Rule 50.4A provides that a CBSX Trading Permit Holder (''TPH'') may become or remain a CBSX TPH only if it is a member of a national securities association.[8] All CBSX TPHs would have six months from the approval of the rule filing to become a member of a national securities association. The proposed rule also provides that CBSX will terminate, upon written notice, the TPH status of any CBSX TPH that fails to meet this requirement.

CBOE states that it conducts surveillance of trading on CBSX and examines the securities-related operations of TPHs for compliance with CBSX Rules and the federal securities laws, rules and regulations. CBSX TPHs may submit orders to other trading venues as customers through executing broker-dealers, which are ultimately executed on those other trading venues (''away trading activity''). Because away trading activity does not occur on CBSX's market, CBOE states that it does not have access to all necessary order and trade information for this trading activity, as it does for trading activity done directly on CBSX, from which it can directly conduct systematic surveillance reviews.

The Exchange notes that, although other national securities exchanges require their members to be members of another national securities exchange or a national securities association,[9] the other national securities exchanges may not have direct access to the order and transaction information related to the away trading activity of their members, as is the case with CBOE, and thus may not be in a position to review the away trading activity for potential violations of federal securities laws, rules and regulations.[10] The Exchange states that requiring a CBSX TPH to be a member of a national securities association (*i.e.* FINRA), but not providing it the option of becoming a member of another national securities exchange, is appropriate to ensure that the CBSX TPH's away trading activity is subject to appropriate regulatory review. According to the Exchange, FINRA rules currently require each FINRA member to submit order data for trading activity on all venues (including away trading activity) to FINRA on a regular basis.[11] The Exchange explains that this order data audit trail provides FINRA the necessary information related to each member's away trading activity to review for and detect possible violations of the federal securities laws, rules and regulations. This, in turn, would allow FINRA to detect possible violations of federal securities laws, rules, and regulations, and take appropriate regulatory and disciplinary action against a CBSX TPH as one of its regulators, or otherwise refer such matter to CBOE for review and consideration of disciplinary action.

Proposed Rule 50.4A requires CBSX TPHs to become a member of FINRA within six months of the date of approval of this rule change.[12] CBOE will announce the date by which CBSX TPHs must comply with this new requirement (the ''Compliance Date'') in a Regulatory Circular.[13] The Exchange notes that if it determines that there are extenuating circumstances which result in a CBSX TPH not being able to comply by the Compliance Date, the Exchange may permit the CBSX TPH to retain its TPH status beyond the Compliance Date for such period of time as the Exchange deems reasonably necessary to enable the CBSX TPH to become a member of FINRA.[14]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBSX is a stock execution facility of CBOE.

[4] *See* Securities Exchange Act Release No. 70806 (November 5, 2013), 78 FR 67424 (''Notice'').

[5] *See* letter from Chris Concannon, Executive Vice President, Virtu Financial BD, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 11, 2013 (''Virtu Letter''); letter from Martin H. Kaplan, Gusrae Kaplan Nusbaum PLLC, to Kevin M. O'Neill, Deputy Secretary, Commission, dated November 18, 2013 (''Gusrae Kaplan Nusbaum Letter''); letter from James Ongena, General Counsel, Chicago Stock Exchange, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated December 3, 2013 (''CHX Letter''); and letter from Mary Ann Burns, Chief Operating Officer, Futures Industry Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 3, 2013 (''FIA Letter'').

[6] *See* letter from Corinne Klott, Attorney, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated December 20, 2013 (''CBOE Letter'').

[7] *See* Securities Exchange Act Release No. 71152, 78 FR 79035 (December 27, 2013).

[8] Currently, Financial Industry Regulatory Authority, Inc. (''FINRA'') is the only registered national securities association. CBOE states that this proposal furthers compliance with Undertaking O of the June 11, 2013 Order Instituting Administrative and Cease-and-Desist Proceedings involving CBOE and C2 Options Exchange, Inc., which requires CBOE to enhance its regulation of CBSX-only TPHs. CBOE notes that this proposed rule change is only one component of its efforts to enhance its regulation of all CBSX TPHs, including CBSX-only TPHs. CBOE notes that although there will technically no longer be any CBSX-only TPHs if the proposed rule change is approved, the Exchange still believes that the proposal will enhance the general regulatory oversight of CBSX TPHs, including those former CBSX-only TPHs.

[9] *See, e.g.,* BATS Exchange, Inc. Rule 2.3, BATS Y-Exchange, Inc. Rule 2.3, EDGA Exchange, Inc. Rule 2.3(a), EDGX Exchange, Inc. Rule 2.3(a), NASDAQ Stock Market LLC Rule 1002(e), and New York Stock Exchange LLC Rule 2.

[10] The Exchange notes that it may obtain an audit trail of this ''away activity'' from which it will be able to conduct direct systematic surveillance reviews once the National Market System consolidated audit trail is finalized and implemented.

[11] *See, e.g.,* FINRA Rules 7440 and 7450.

[12] As of December 20, 2013, 38 CBSX TPHs would be affected by this eligibility requirement (*i.e.,* are not already members of FINRA).

[13] The Exchange will also issue periodic written reminders to all CBSX TPHs affected by this requirement that the CBSX TPH must become a FINRA member by the Compliance Date.

[14] The Exchange notes that the ability to extend certain time limits where extenuating circumstances exist is consistent with and similar to other Exchange rules. *See e.g.,* CBOE Rule 3.19 and CBOE Rule 3.30.

III. Discussion of Comment Letters, CBOE's Response, and Commission Findings

After careful review and for the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposal is consistent with Section 6(b)(2) of the Act,[18] which requires that the rules of a national securities exchange provide that any registered broker or dealer may become a member of such exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[19] 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.

The Commission received four comment letters on the proposed rule change.[20] All four commenters object to the proposed rule change, argue that it is inconsistent with the Act, and recommend that CBOE either enter into a regulatory services agreement or a Rule 17d–2 [21] plan with FINRA. In response, CBOE states that none of the comments provide a basis for disapproval of the proposal and reiterates its position that the proposal meets the standards for approval under the Act.[22] The comments, CBOE's response, and the Commission's findings are discussed in detail below.

A. Statutory Requirements for Exchange Membership

Two commenters [23] argue that the proposed rule change violates Section 6(b)(2) of the Act [24] because the proposal would impose requirements for exchange membership beyond those contained in the Act. Section 6(b)(2) of the Act provides that ''[a]n exchange shall not be registered as a national securities exchange unless the Commission determines that . . . subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer . . . may become a member of such exchange. . .'' [25] The two commenters state that the proposal violates Section 6(b)(2) because it effectively denies or excludes certain registered broker-dealers from membership (TPH status) with CBSX.[26] One of the commenters asserts that CBOE incorrectly interprets Section 6(b)(2) as permitting it to exclude certain registered broker-dealers based on their affiliation with certain other self-regulatory organizations (''SROs'').[27] The other commenter points to Section 6(c) of the Act,[28] which provides specific reasons for which a registered broker-dealer may be prohibited from becoming a member of an exchange, as further evidence that the proposal is in violation of Section 6(b)(2) of the Act.[29] The commenter notes that none of the bases in Section 6(c) permit an exchange to deny membership to a broker-dealer solely on the basis of not being a member of a national securities association.[30]

In response, CBOE states that it is incorrect to infer from these statutory provisions that any registered broker-dealer meeting the general requirements of Section 6(b)(2) and that does not fall within the categories enumerated in Section 6(c) is always entitled to membership.[31] CBOE notes that the rules of national securities exchanges virtually always provide bases for denial of membership in addition to those enumerated in Section 6(c) of the Act.[32] CBOE also notes that other national securities exchanges have membership with another national securities exchange or national securities association as a condition for membership.[33]

The Commission believes that the proposed rule change is consistent with Section 6(b)(2) and Section 6(c) of the Act. While Section 6(c) specifies certain bases upon which a national securities exchange can deny membership to, among other entities, a broker or a dealer, Section 6(c) is not intended to provide an exclusive list of reasons a national securities exchange can deny membership to a party. National securities exchanges may have requirements for exchange membership beyond those contained in the Act so long as they are consistent with the Act.[34] For example, the Commission has approved the rules of several national securities exchanges that require membership with another SRO as a condition of membership.[35] The Commission believes that CBOE's proposal requiring CBSX TPHs to be members of FINRA, another SRO, is consistent with Section 6(b)(2) and Section 6(c) of the Act.

B. Discrimination Among CBOE Members

Two commenters assert that the proposal violates Section 6(b)(5) [36] by discriminating against CBSX TPHs.[37] Section 6(b)(5) provides, among other things, that the rules of an exchange must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. One commenter states that the proposal results in certain CBOE members that are not FINRA members being denied access to CBSX (CBOE's exchange facility for equities), while other CBOE members that are not FINRA members will continue to have access to the CBOE options facility, thus effectively discriminating against members that trade equities.[38] The other commenter shares the same concern and states that this disparate treatment is impermissible under the Act.[39]

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(2).

[19] 15 U.S.C. 78f(b)(8).

[20] *See supra,* note 5.

[21] 17 CFR 240.17d–2.

[22] *See* CBOE Letter.

[23] *See* Virtu Letter and FIA Letter.

[24] 15 U.S.C. 78f(b)(2).

[25] Section 6(c) of the Act provides bases for denial of membership in a national securities exchange, including failure to register as a broker-dealer, statutory disqualification, or failure to meet the standards of financial responsibility or operational capacity, or a showing that the party has or that there is a reasonable likelihood that they may engage in acts or practices inconsistent with just and equitable principles of trade.

[26] *See* Virtu Letter, at 2; FIA Letter, at 3–4.

[27] *See* Virtu Letter, at 2.

[28] 15 U.S.C. 78f(c).

[29] *See* FIA Letter, at 3–4.

[30] *Id.*

[31] *See* CBOE Letter, at 3.

[32] *Id.*

[33] *See* CBOE Letter, at 3–4. CBOE also noted that former NYSE Rule 2(b) required membership in FINRA as a condition precedent to becoming or remaining a member organization. *Id.,* at 4.

[34] *See e.g.* CHX Article 3; Rules of BATS Exchange, Chapter II; Nasdaq Stock Market Rule 1000 series.

[35] *See supra,* note 9.

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Virtu Letter; CHX Letter.

[38] *See* Virtu Letter, at 2.

[39] *See* CHX Letter, at 3.

CBOE responds to these concerns by stating that Section 6(b)(5) requires only that exchange rules be designed not to permit unfair discrimination and that CBOE may impose ''requirements on a subgroup of members who elect to avail themselves of specified exchange services or who conduct specified types of business,'' while not imposing such requirements ''on other members who choose not to use such services or conduct such types of business, or otherwise where such additional requirements would serve a valid regulatory purpose.'' [40] The Exchange argues that the proposed rule is justified by the need for greater regulatory oversight of the away trading activity of CBSX TPHs. Because away trading activity does not occur on the CBSX market, CBOE states that it does not have access to all the necessary order and trade information for this trading activity with which to directly conduct systematic surveillance reviews relating to this trading activity.[41] CBOE believes that because FINRA's rules require each FINRA member to submit order data for its trading activity on all trading venues on a regular basis, FINRA has greater access to off-exchange trading activity conducted by its members than do national securities exchanges.[42] Therefore, CBOE believes that its proposal to require FINRA membership of CBSX TPHs is reasonably designed to enhance regulatory oversight of CBSX TPHs so it does not unfairly discriminate among CBOE TPHs, but rather imposes a reasonable additional obligation on those CBOE TPHs who choose to be CBSX TPHs as well.[43]

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act. The Commission believes that the proposal does not unfairly discriminate against CBSX TPHs. As CBOE stated, Section 6(b)(5) does not prevent an exchange from imposing additional requirements on a subgroup of members who elect to avail themselves of specified exchange services or who conduct certain types of business. Here, CBOE's proposal to require CBSX TPHs to be members of FINRA while not requiring CBOE TPHs to be members of FINRA is not unfairly discriminatory because it will apply equally to all CBSX TPHs and enhance the regulatory oversight of CBSX TPHs' trading activity.

C. Cost

Three commenters argue that the proposed rule change imposes a substantial cost on CBSX TPHs by requiring dual membership with FINRA.[44] One commenter believes that the proposal will make it prohibitively expensive for some CBSX TPHs to continue to hold CBSX trading permits or become members of other exchanges, thereby imposing a burden on competition not necessary or appropriate in furtherance of the purposes of the Act in violation of Section 6(b)(8).[45] The commenter argues that CBSX TPHs that are proprietary trading firms that do not carry public customer accounts would be required to bear the same costs of FINRA membership as CBSX TPHs that carry public customer accounts.[46] The commenter further states that the ''burdens on competition are not appropriate because [s]ection 17(d) of the Act provides the mechanism through which an SRO could share certain regulatory responsibilities with other SROs . . .'' [47] Another commenter criticizes the proposal stating that dual FINRA membership places a large burden on members including, but not limited to, an additional layer of regulatory costs and being subject to compliance with FINRA rules, which have no relevance to proprietary traders who do not have public customers.[48]

A third commenter points out that ''undertaking FINRA membership is a significant, time-consuming and expensive exercise.'' [49] The commenter explains that FINRA membership would require firms (1) to review and analyze the applicability of a vast array of rules and interpretations from FINRA, the majority of which are designed for firms that transact customer business; (2) to amend filings with other exchanges, incurring additional unnecessary filing costs; (3) to maintain blanket fidelity bond coverage, which the commenter states is typically designed to insure a firm against intentional fraudulent and dishonest acts involving customer funds or customer accounts, while the firms affected by the proposed rule change do not transact customer business; (4) to incur the costs of reporting to FINRA's order audit trail system; and (5) to require their associated persons to pass additional exams, since certain exams (such as the Series 56) are not recognized by FINRA.[50] The commenter states that if this proposed rule goes into effect, CBSX would be the only exchange requiring FINRA membership for member firms that do not transact customer business and therefore would position CBSX as an outlier and subject to possible regulatory arbitrage, which could increase market fragmentation.[51]

In response to these concerns, CBOE states that any CBSX TPH that finds it burdensome to become a FINRA member can resign its CBSX membership and become a member of a national securities exchange that does not require membership with FINRA.[52] CBOE states, ''[t]here are any number of national securities exchanges that would provide the alternative, so the Proposal imposes no burden on competition that a CBSX TPH cannot easily eliminate if it chooses.'' [53] CBOE also states that if a CBSX TPH cannot comply with the proposal by the Compliance Date due to extenuating circumstances, CBOE may permit the CBSX TPH to retain its status as a TPH for a time CBOE deems reasonably necessary for the CBSX TPH to become a member of FINRA.[54] Regarding dual registration, CBOE notes that other national securities exchanges require membership in another SRO.[55] Further, according to the Exchange, CBSX TPHs that do not conduct a public customer business would be subject only to those FINRA rules that were applicable to their business.[56] CBOE also notes that if associated persons of CBSX TPHs are currently licensed in a registration category that FINRA does not recognize, FINRA's rules permit FINRA to waive its licensing requirements and accept other standards for qualifying for registration.[57]

The Commission believes that the proposal is consistent with Section 6(b)(8) of the Act and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As CBOE stated, any firm that determines not to become a FINRA member can join another national securities exchange

[40] *See* CBOE Letter, at 6.

[41] *Id.*

[42] *Id.,* at 6–7. CBOE also explains that, as a member of the Intermarket Surveillance Group, CBOE receives an equity audit trail of all equity market orders and trade information for away trading activity, but that the audit trail does not provide the necessary granular level of detail to denote when a CBSX TPH is executing a trade as a customer through another broker-dealer on an away market. CBOE states that without such granular information, the Exchange is limited in the reviews it can conduct of this activity. *Id.,* at 6, note 22.

[43] *Id.,* at 7.

[44] *See* Gusrae Nusbaum Kaplan Letter, CHX Letter, and FIA Letter.

[45] *See* CHX Letter, at 2–3.

[46] *Id.,* at 3.

[47] *Id.*

[48] *See* Gusrae Nusbaum Kaplan Letter, at 2.

[49] *See* FIA Letter, at 4.

[50] *Id.,* at 4–5.

[51] *Id.,* at 6.

[52] *See* CBOE Letter, at 9.

[53] *Id.*

[54] *Id.,* at 10.

[55] *Id.,* at 9.

[56] *Id.,* at 11.

[57] *See* CBOE Letter, at 11.

that does not require FINRA membership. The Commission, as noted above, has approved the membership rules of several exchanges that require membership with another SRO as a condition of membership.[58]

D. Section 15(b)(8) of the Act and Rule 15b9–1 Thereunder

One commenter[59] argues that the proposal conflicts with Section 15(b)(8) of the Act[60] and Rule 15b9–1 thereunder.[61] Section 15(b)(8) of the Act prohibits a registered broker or dealer from effecting a transaction in a security unless the broker or dealer is a member of a national securities association or effects transactions in securities solely on a national securities exchange of which it is a member. Rule 15b9–1(a) exempts a broker or dealer from becoming a member of a national securities association if it: (1) Is a member of a national securities exchange; (2) carries no customer accounts; and (3) has annual gross income of no more than $1,000 that is derived from securities transactions otherwise than on an exchange of which it is a member.[62] The commenter believes that the proposed rule change conflicts with these provisions because it would require all CBSX TPHs—even those that would qualify for the Rule 15b9–1 exemption—to become members of a national securities association.[63] The commenter states this directly contradicts Rule 15b9–1, which recognizes that certain broker-dealers should not be required to become members of a national securities association.[64]

In its response, CBOE states that neither Section 15(b)(8) nor Rule 15b9–1 preclude CBOE from adopting a more restrictive rule concerning when a member must become a member of a national securities association.[65] In fact, CBOE claims that exchanges often impose requirements on their members that are stricter than those specifically enumerated in the Exchange Act and Commission rules.[66] CBOE believes that Rule 15b9–1 ''has no application if the requirement to become a member of a national securities association is required not by Section 15(b)(8) of the [Act], but by some other authority, such as an exchange rule.''[67]

The Commission does not believe that the proposed rule change conflicts with Section 15(b)(8) or Rule 15b9–1. As CBOE stated, national securities exchanges may impose requirements on their members that are more stringent than those imposed by the Act or by Commission rules. Therefore, the requirement imposed by proposed Rule 50.4A that CBSX TPHs become members of FINRA, although more restrictive than Section 15(b)(8), is consistent with the Act and not in violation of Section 15(b)(8) or Rule 15b9–1.

E. Satisfaction of Regulatory Obligations

One commenter[68] believes that the proposed rule change is an admission of CBOE's failure to satisfy its exchange obligations, in violation of Section 6(b)(1) of the Act, which requires an exchange to, among other things, enforce compliance by its members with provisions of the Act and the rules thereunder.[69] The commenter argues it is not appropriate for an exchange to alter its membership requirements in order to satisfy its regulatory burden and that if CBOE fails to satisfy its regulatory responsibilities, then CBOE's status as an exchange and its ability to operate the CBSX must be scrutinized.[70] This commenter and another commenter observe that the issue of CBOE not having access to all necessary order and trade information for away trading activity is not unique to CBOE, yet other exchanges have been able to fulfill their exchange obligations regardless.[71] Specifically, the other commenter argues that other exchanges have not shifted the costs associated with surveillance and monitoring to certain of its member firms by imposing a burdensome new membership requirement at FINRA in order to discharge their regulatory obligations.[72] A third commenter states that the proposal is an inefficient attempt by the CBOE to remedy a fundamental break down in its regulatory structure, that instead of building up its own surveillance and enforcement departments and abilities, the CBOE is shifting the burden entirely onto its members and FINRA.[73] Finally, a fourth commenter states that it is concerned with the precedent that will be set if the proposal is approved, specifically that an SRO will be permitted to adopt rules that will unilaterally shift some of its responsibilities to another SRO.[74]

All four commenters suggest that a better resolution would be for CBOE to enter into a Rule 17d–2 plan or a regulatory services agreement with FINRA in lieu of the proposed rule change.[75] One commenter recommends that CBOE either adopt a rule requiring its members to send their trading activity data to FINRA, or that CBOE enter into a regulatory services agreement with FINRA allowing FINRA to collect this data and surveil it.[76] The other commenters were in favor of CBOE entering into Rule 17d–2 plan.[77]

In response, CBOE reiterates that the proposal is designed to enhance the regulation of CBSX.[78] CBOE explains that it does not have access to all of the necessary order and trade information for away trading activity and that the proposal addresses this limitation on its ability to oversee away trading activity.[79] CBOE further explains that entering into a 17d–2 agreement with FINRA is not possible to address the away trading activity of CBSX TPHs because a 17d–2 agreement is available only with respect to broker-dealers that are members of each SRO that is a party to the agreement, and by definition, the proposal addresses the situation in which CBSX TPHs are not FINRA members.[80] CBOE acknowledges that there may be other ways to accomplish its regulatory goal, but that it has determined that its proposal is a reasonable method of achieving its regulatory objectives.[81] CBOE also reiterates its position that its proposal is consistent with the Exchange Act and notes that this is further evidenced by the fact that the Commission has previously approved exchange rules requiring members to be members of at least one other SRO.[82]

[58] *See supra,* note 9.

[59] *See* CHX Letter, at 2.

[60] 15 U.S.C. 78o(b)(8).

[61] 17 CFR 240.15b9–1.

[62] Rule 15b9–1(b) states that the gross income limitation in (a) does not apply to income derived from transactions (1) for the dealer's own account with or through another registered broker or dealer or (2) through the Intermarket Trading System.

[63] *See* CHX Letter, at 2.

[64] *Id.*

[65] *See* CBOE Letter, at 5.

[66] *Id.*

[67] *Id.*

[68] *See* Virtu Letter, at 1, 3.

[69] 15 U.S.C. 78f(b)(1). Section 6(b)(1) of the Act states that ''[a]n exchange shall not be registered as a national securities exchange unless the Commission determines that . . . [s]uch exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and . . . to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange.''

[70] *See* Virtu Letter, at 3.

[71] *Id.* and FIA Letter, at 6.

[72] *See* FIA Letter, at 6.

[73] *See* Gusrae Kaplan Nusbaum Letter, at 2.

[74] *See* CHX Letter, at 1.

[75] *See* Virtu Letter, at 1–2; Gusrae Kaplan Nusbaum Letter, at 3; CHX Letter, at 3; and FIA Letter, at 6.

[76] *See* Gusrae Kaplan Nusbaum Letter, at 3.

[77] *See* Virtu Letter, at 1–2; CHX Letter, at 3; and FIA Letter, at 6.

[78] *See* CBOE Letter, at 7.

[79] *Id.*

[80] *Id.,* at 7–8.

[81] *Id.,* at 8.

[82] *Id.* CBOE also stated that because other exchanges also require their members to be

The Commission does not believe that CBOE's proposal, in and of itself, provides evidence that CBOE has failed to meet its exchange obligations. The Commission also notes that CBOE's proposal in no way (1) reduces CBOE's obligations under the Act to meet its regulatory responsibilities as an SRO, or (2) shifts any of CBOE's responsibilities to FINRA. The Commission agrees with CBOE that a Rule 17d–2 plan is available as an option only with respect to broker-dealers that are members of each SRO that is a party to the agreement. CBOE has proposed to require CBSX members to be members of FINRA in order to enhance regulation of their away trading activity. Whether or not there may be other less costly or burdensome ways to enhance regulation of away trading activity by CBSX members, the issue before the Commission is whether the current proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to SROs. If so, the Commission must approve the proposed rule change. The Commission believes that the proposal is consistent with the Act. As stated above, exchanges may impose membership requirements that are more stringent than those contained in the Act. The Commission has previously approved rules of other exchanges requiring membership in another SRO.

IV. Conclusion

For all the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. *It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[83] that the proposed rule change (SR–CBOE–2013–100) be, and it is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[84]

Kevin M. O'Neill,

Deputy Secretary.

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members of at least one other SRO, it is evident that its proposal does not reflect that it is in violation of Section 6(b)(1). *Id.,* at note 25.

[83] 15 U.S.C. 78s(b)(2).

[84] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71509; File No. SR–CBOE–2014–010]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Fee for Qualification Examination Waiver Requests

February 7, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to establish a fee for qualification examination waiver requests. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 3.6A, Interpretation and Policy .05, authorizes the Exchange, in exceptional cases and where good cause is shown, to waive qualification examinations and accept other standards as evidence of an applicant's qualification for registration. This authority is to be exercised in exceptional cases and where good cause is shown by the applicant. The rule further states that advanced age or physical infirmity, will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.

The Exchange has entered into a regulatory services agreement (''RSA'') with the Financial Industry Regulatory Authority, Inc. (''FINRA'') pursuant to which FINRA will process qualification examination waiver requests on behalf of the Exchange (''Waiver Requests'').[3] Under the RSA, CBOE Trading Permit Holders (''TPHs'') and persons associated with CBOE TPHs seeking a waiver of a qualification examination will submit a Waiver Request to FINRA.[4] FINRA will process all Waiver Requests submitted by CBOE TPHs and their associated persons, whether the Waiver Request is for a FINRA examination or a non-FINRA examination (e.g., the Series 56 examination).

FINRA will review each Waiver Request based on guidelines approved by the Exchange and provide the Exchange with a recommendation regarding the disposition of the Waiver Request. The Exchange will make the final decision regarding whether or not to grant or deny a Waiver Request.[5] FINRA will maintain files and records made, collected or otherwise created by FINRA in the course of performing services under the RSA. Such files and records shall include, but not be limited to, FINRA Waiver Request disposition recommendations and the basis for its

[3] CBOE Rule 15.9(b) authorizes the Exchange to enter into agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934.

[4] Currently, Waiver Requests must be submitted to FINRA through the FINRA Firm Gateway.

[5] Notwithstanding the RSA, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities.

recommendations,[6] CBOE decisions and the basis for its decisions,[7] and letters sent to requesting CBOE TPHs communicating CBOE's decisions.

The Exchange will pay a fee to FINRA under the RSA for each Waiver Request of a non-FINRA examination (e.g., the Series 56 examination) processed by FINRA. The Exchange proposes to charge CBOE TPHs a fee of $200 for each Waiver Request of a non-FINRA examination processed by FINRA. The proposed fee would help the Exchange recoup its costs under the RSA.

The proposed fee would be effective on February 3, 2014.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed fee is reasonable because it would help the Exchange recoup its costs in engaging FINRA to process Waiver Requests of non-FINRA examinations by CBOE TPHs and their associated persons. The Exchange believes the proposed fee is equitable and not unfairly discriminatory because it would apply equally to all CBOE TPHs who submit Waiver Requests of non-FINRA examinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed fee will impose an unnecessary burden on intramarket competition because it would apply equally to all CBOE TPHs who submit Waiver Requests of non-FINRA examinations. The Exchange does not believe that the proposed fee will impose an unnecessary burden on intermarket competition because the fee would only apply to CBOE TPHs.

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 [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–010 and should be submitted on or before March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

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[6] The recommendation provided to CBOE will include a detailed explanation and justification as to whether to grant or deny the Waiver Request, and in those cases where the recommendation is to grant a waiver, the reasoning shall support why FINRA believes it is an exceptional case and that good cause has been shown to warrant the granting of the Waiver Request.

[7] CBOE will notify FINRA in writing of its final decision regarding whether to grant or deny a Waiver Request, including any additional information regarding such decision.

The Commission expects CBOE to document in writing its rationale for any decision when CBOE determines not to follow FINRA's recommendation.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *Id.* [sic]

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71505; File No. SR–OCC–2014–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Accommodate the Clearing of Physically-Settled Single Stock Futures for Which Delivery Would Occur on the First Business Day After the Maturity Date

February 7, 2014.

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 January 28, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by OCC. OCC has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would accommodate the clearing of physically-settled single stock futures (''SSFs'') for which delivery would occur on the first, rather than the third, business day after the maturity date of each such SSF.

Initially, OneChicago, LLC (''OCX'') is proposing to list SSFs for which delivery would occur on the first business day after maturity. In connection therewith, OCC is proposing to enter into an amendment (the ''Amendment'') to the Amended and Restated Security Futures Agreement for Clearing and Settlement Services dated May l5, 2012, between OCC and OCX (the ''Clearing Agreement''), in order to provide for OCX's indemnification of OCC for claims arising from representations OCX may make to buyers and sellers of security futures contracts, including SSFs, regarding the tax treatment of their purchase or sale.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Changes to OCC's Rules

OCC is proposing to modify its rules to accommodate the clearing of a physically-settled SSF for which the delivery date would be the first business day following the maturity date (''T+1 SSFs'') rather than the third business day following the maturity date (''T+3 SSFs''). Currently, OCC only clears T+3 SSFs. In order to accommodate this different delivery schedule, OCC proposes to amend the definition of delivery date in Rule 1302 for physically-settled stock futures as well as to modify references to the timing of the delivery date for security futures in the broker-to-broker settlement procedures in Rule 903.

Settlement of physically-settled SSFs is ordinarily effected through the National Securities Clearing Corporation (''NSCC''), pursuant to NSCC's rules and OCC Rule 901 regarding transactions in physically-settled stock futures. OCC has confirmed with NSCC that NSCC can operationally accommodate T+1 SSFs.[5] As is the case for stock futures already cleared by OCC for which NSCC provides physical delivery settlement services, and in accordance with OCC Rule 601, OCC will collect risk margin from its clearing members on deliveries of T+1 SSFs for one business day following the maturity date and release such risk margin to its clearing members on the second business day following the maturity date. OCC understands that, consistent with NSCC's rules, NSCC would also collect margin based on the mark-to-market of the unsettled stock in the morning of the first business day following maturity in connection with receipt of the stock trade from OCC. This will result in a temporary double-margining of T+1 SSFs. As with existing physically-settled SSFs cleared by OCC, T+1 SSFs are futures and therefore not covered by the Third Amended and Restated Options Exercise Settlement Agreement dated as of February 16, 1995, between OCC and NSCC. OCC and NSCC will have no obligation to turn over to the other margin deposited by a clearing member that has been suspended.

OCX's New Product and Amendment to the Clearing Agreement

OCX's New Product

OCX is proposing to list weekly maturity T+1 SSFs [sic].[6] OCX has de-listed its weekly maturity T+3 SSFs prior to the launch of weekly maturity T+1 SSFs, and will initially list weekly maturity T+1 SSFs on five to ten underlyings.[7]

Amendment to the Clearing Agreement

OCC performs the clearing function for OCX pursuant to the Clearing Agreement, under which OCX agrees to indemnify and hold harmless OCC against any and all liabilities and costs in settlement in connection with any proceeding that arises out of, or is based upon, any violation or alleged violation by OCX of any law or governmental regulation. OCC and OCX have agreed to the proposed Amendment, which expands and clarifies this indemnification to include OCX's indemnification of OCC for claims that arise from any representations that OCX makes regarding the tax treatment of any futures product cleared pursuant to the Clearing Agreement, including SSFs.

OCC believes the additional indemnification described above is appropriate because OCX has designed its proposed weekly maturity T+1 SSFs with the intention that investors may enter into an ''exchange for physical'' transaction involving weekly maturity T+1 SSFs and receive the same tax treatment as parties to a stock loan transaction under Section 1058 of the Internal Revenue Code (the ''Code''). While stock loan transactions involve the transfer of a stock, which potentially could trigger recognition of a gain or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 87s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed change, or such shorter time as designated by the Commission.

[5] In the event the security underlying a T+1 SSF is not eligible for physical delivery settlement at NSCC—for example, due to trading suspensions or delistings—OCC would instruct physical delivery settlement to occur on a broker-to-broker basis in accordance with the applicable provisions of Chapter IX of its Rules. As noted above, OCC proposes to modify Rule 903 to accommodate the one-day delivery date for T+1 SSFs.

[6] The Commission Staff notes that this filing (SR–OCC–2014–02) does not encompass any proposal by OCX's to list weekly maturity T+1 SSFs.

[7] OCC understands that OCX's monthly maturity SSFs will continue to be T+3 SSFs.

loss under the Code, under Code Section 1058 a transfer of securities under a stock lending arrangement satisfying certain conditions is generally not considered a recognition event. The Amendment is intended to provide for OCX's indemnification of OCC for any claims arising from the representations, if any, that OCX may make regarding the SSFs' eligibility for this tax treatment.

Prior to the launch of the T+1 SSFs, OCC will send to clearing members and also post on its public Web site an Information Memo describing the features of T+1 SSFs, as described above.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[8] because it will modify OCC's Rules in a manner that will promote the prompt and accurate clearance and settlement of derivative agreements for which OCC is responsible. By amending its rules to accommodate T+1 SSFs, in addition to T+3 SSFs, OCC will be able to clear and facilitate settlement of SSFs that will settle more promptly than SSFs currently cleared by OCC, thereby reducing systemic risk. In addition, and also consistent with Section 17A(b)(3)(F) of the Act, the proposed rule change will continue to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions [9] because, as with T+3 SSFs, both OCC and NSCC will facilitate the settlement of T+1 SSFs. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[10] With respect to any burden on competition among clearing agencies, OCC is the only registered clearing agency that performs central counterparty services for the security futures markets.

Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency and the markets that the clearing agency serves. This proposed rule change primarily affects security futures clearing members and OCC believes that the proposed modifications would not unfairly inhibit access to OCC's services, or disadvantage or favor any particular user in relationship to another user, because the changes will affect all clearing members equally, T+1 SSFs will be cleared using existing systems and T+1 SSFs will be margined similarly to existing products.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–02 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–OCC–2014–02. 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 of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_02.pdf.* 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–OCC–2014–02 and should be submitted on or before March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03127 Filed 2–12–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] *Id.*

[10] 15 U.S.C. 78q–1(b)(3)(I).

[11] 15 U.S.C 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). Notwithstanding the foregoing, OCC has indicated that implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation § 40.6.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71512; File No. SR–CBOE–2014–013]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Short Term Option Series Program

February 7, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 4, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a minor clarification to the Short Term Option Series Program (the ''Program'' or ''Weeklys'') to clarify when series may be added in index option classes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make a minor change to its Weeklys Program for index option classes. More specifically, the Exchange is proposing to clarify when series of index option classes may be added in the Weeklys Program. The current rule states that ''Short Term Option Series may be added up to, and including on, the Short Term Option Expiration Date for that options series.''[3] The Exchange is proposing to clarify the rule to state that Short Term Option Series may be added ''up to, and including on, the last trading day for that option series.''

The Exchange believes this clarification will take into account that index options may be A.M.-settled or P.M.-settled. For A.M.-settled options, the settlement occurs the morning of the expiration day, and thus, no trading occurs on expiration day in that series. Because of that, series may not actually be added on the expiration day for the series because it will be after the settlement value has been calculated for that index. The Exchange believes that the proposed language will take into account these A.M.-settled index option series along with P.M.-settled series as P.M.-settled options may be trading on expiration day because they are not settled until after the close of trading. Thus the proposed language, ''on the last trading day'' will accommodate both A.M.-settled and P.M.-settled index options.

The Exchange believes that this clarification will more accurately describe when option series may be added in index option classes participating in the Weeklys program creating less confusion for Trading Permit Holders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed clarification will protect investors and the marketplace by more accurately describing how the Weeklys Program operates with respect to index options.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. More specifically, the Exchange does not believe the proposed change will impose any burden on intramarket competition or intermarket competition as it is merely attempting to better describe a current practice on the Exchange while providing more clarity to Trading Permit Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 24.9(a)(2)(A)(iv).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–013 and should be submitted on or before March 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03129 Filed 2–12–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Centor Energy, Inc.; Order of Suspension of Trading

February 11, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Centor Energy, Inc. (''Centor'') because of questions regarding the accuracy of assertions by Centor, and by others, in press releases and promotional materials concerning, among other things, the company's assets, operations, and financial prospects. Centor is a Nevada company based in Florida. The company's common stock is quoted on the OTC Link under the symbol CNTO.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on February 11, 2014 through 11:59 p.m. EST on February 25, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03259 Filed 2–11–14; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2014–0007]

Privacy Act of 1974, As Amended: Proposed New Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Proposed New Routine Use.

SUMMARY: Pursuant to the Privacy Act of 1974, we are issuing public notice of our intent to add a new routine use to an existing system of records entitled: Master Files of Social Security Number (SSN) Holders and SSN Applications, (60–0058) (the Enumeration System). This system was last published in the **Federal Register**, 75 FR 82121 (Dec. 29, 2010); a revision to the routine uses was published, 78 FR 40,542 (July 5, 2013). The new routine use will enable us to verify information that the Corporation for National and Community Services (CNCS) requires in order to administer the National and Community Service Act (NCSA), 42 U.S.C. 12602. Specifically, CNSC will use the information we provide to verify statements made by an individual declaring that such individual is in compliance with section 146 of the NCSA. The new routine use is described below. We will rely on this routine use to disclose only those data elements from our system of records that CNCS has demonstrated are necessary for the administration of the NCSA.

DATES: We invite public comment on this proposal. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by March 17, 2014.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401 or through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* All comments we receive will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Anthony Tookes, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–0097, Email: *Anthony.Tookes@ssa.gov.*

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on the proposed new routine use.

Dated: February 7, 2014.

Kirsten J. Moncada,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Social Security Administration

SYSTEM NUMBER:

60–0058

SYSTEM NAME:

Master Files of Social Security Number (SSN) Holders and SSN Applications, Social Security Administration (SSA)

* * * * *

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

46. To the Corporation for National and Community Service (CNCS) information required to Administer the National and Community Service Act (NCSA).

* * * * *

[FR Doc. 2014–03117 Filed 2–12–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8629]

Bureau of Economic and Business Affairs; Removal of Sanctions on Person on Whom Sanctions Have Been Imposed Under the Iran Sanctions Act of 1996, as Amended

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Secretary of State has determined that Associated Shipbroking (a.k.a. SAM) is no longer engaging in sanctionable activity described in section 5(a) of the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note) (''ISA''), as amended, and that this person has provided reliable assurances that it will not knowingly engage in such activities in the future. Therefore, certain sanctions that were imposed on Associated Shipbroking on May 24, 2011 are hereby lifted.

DATES: *Effective Date:* The sanctions on Associated Shipbroking are lifted effective February 7, 2014.

FOR FURTHER INFORMATION CONTACT: On general issues: Office of Sanctions Policy and Implementation, Department of State, Telephone: (202) 647–7489.

SUPPLEMENTARY INFORMATION: On May 24, 2011, the Secretary of State made a determination to impose certain sanctions on, *inter alia,* Associated Shipbroking (a.k.a. SAM) under the Iran Sanctions Act of 1996, as amended (Pub. L. 104–172) (50 U.S.C. 1701 note). *See* 76 FR 56866 (September 24, 2011).

At that time, pursuant to section 5(a) of ISA and the authority delegated to the Secretary of State in the Presidential Memorandum of September 23, 2010, 75 FR 67025 (the ''Delegation Memorandum''), the Secretary determined to impose on Associated Shipbroking and any person in which Associated Shipbroking has an interest of fifty percent or more the following sanctions described in section 6 of ISA:

1. *Foreign Exchange.* Any transactions in foreign exchange that are subject to the jurisdiction of the United States in which Associated Shipbroking has any interest shall be prohibited.

2. *Banking transactions.* Any transfers of credit or payments between financial institutions or by, through, or to any financial institutions, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of Associated Shipbroking, shall be prohibited.

3. *Property transactions. It shall be prohibited to:*

a. Acquire, hold, withhold, use, transfer, withdraw, transport, import, or export any property that is subject to the jurisdiction of the United States and with respect to which Associated Shipbroking has any interest;

b. Deal in or exercise any right, power, or privilege with respect to such property.

c. Conduct any transactions involving such property.

Pursuant to section 9(b)(2) of ISA and the authority delegated to the Secretary of State in the Delegation Memorandum, the Secretary now has determined and certified to Congress that Associated Shipbroking is no longer engaging in sanctionable activity described in section 5(a) of ISA, and that this person has provided reliable assurances that they will not knowingly engage in such activities in the future. The Secretary, therefore, has determined to lift the above-referenced sanctions imposed on Associated Shipbroking.

The sanctions described above with respect to Associated Shipbroking are no longer in effect. Pursuant to the authority delegated to the Secretary of State in the Delegation Memorandum, relevant agencies and instrumentalities of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this notice.

The following constitutes a current, as of this date, list of persons on whom sanctions are imposed under ISA. The particular sanctions imposed on an individual person are identified in the relevant **Federal Register** Notice.

—Belarusneft (see Public Notice 7408, 76 FR 18821, April 5, 2011)
—BimehMarkazi-Central Insurance of Iran (See Public Notice 8268, 78 FR 21183, April 9, 2013)
—Cambis, Dimitris (See Public Notice 8268, 78 FR 21183, April 9, 2013)
—FAL Oil Company Limited (see Public Notice 7776, 77 FR 4389, January 27, 2012)
—Ferland Company Limited (See Public Notice 8352, 78 FR 35351, June 12, 2013)
—Impire Shipping (See Public Notice 8268, 78 FR 21183, April 9, 2013)
—Jam Petrochemical Company (See Public Notice 8352 78 FR 35351, June 12, 2013)
—Kish Protection and Indemnity (a.k.a. Kish P&I) (See Public Notice 8268, 78 FR 21183, April 9, 2013)
—Kuo Oil (S) Pte. Ltd. (see Public Notice 7776, 77 FR 4389, January 27, 2012)
—NaftiranIntertrade Company (see Public Notice 7197, 75 FR 62916, October 13, 2010)
—Niksima Food and Beverage JLT (See Public Notice 8352, 78 FR 35351, June 12, 2013)
—Petrochemical Commercial Company International (a.k.a. PCCI) (see Public Notice 7585, 76 FR 56866, September 14, 2011)
—Petróleos de Venezuela S.A. (a.k.a. PDVSA) (see Public Notice 7585, 76 FR 56866, September 14, 2011)
—Royal Oyster Group (see Public Notice 7585, 76 FR 56866, September 14, 2011)
—Speedy Ship (a.k.a. SPD) (see Public Notice 7585, 76 FR 56866, September 14, 2011)
—Sytrol (see Public Notice 8040, 77 FR 59034, September 25, 2012)
—Zhuhai Zhenrong Company (see Public Notice 7776, 77 FR 4389, January 27, 2012)

Dated: January 7, 2014.

William E. Craft,

Acting Assistant Secretary, for Economic and Business Affairs.

[FR Doc. 2014–03233 Filed 2–12–14; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement Adoption; Washington, DC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of its intent to adopt an existing Final Environmental Impact Statement in

accordance with the Council on Environmental Quality regulations, 40 CFR 1506.3. The Final EIS has been prepared and approved by the National Park Service (NPS).

FOR FURTHER INFORMATION CONTACT: Jack Van Dop, Senior Technical Specialist, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166, Telephone 703–404–6282.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara.* The Final EIS, prepared by NPS is posted on their Planning, Environment & Public Comment Web site at *http://parkplanning.nps.gov/document.cfm?parkID=374&projectID=26159&documentID=37956.* A hardcopy of the NPS Final EIS can be viewed at the following locations until March 28, 2014, Federal Highway Administration, Eastern Federal Lands Highway Division, 21400 Ridgetop Circle, Sterling, VA 20166 and NPS Everglades National Park Headquarters, 40001 State Road 9336, Homestead, FL 33034–6733.

Background

The FHWA intends to adopt the approved Final EIS for the Tamiami Trail Modifications: Next Steps, prepared by the NPS. The FHWA adoption is proposed in order to meet the agency's National Environmental Policy Act (NEPA) requirements associated with the use of U.S. Department of Transportation funds for this action and possible involvement of FHWA in the implementation of the project, as proposed in the NPS Tamiami Trail Modifications: Next Steps Final EIS. The project consists of modifications to the Tamiami Trail, including bridging and road raising, required to restore the ecological conditions in Northeast Shark River Slough and the Water Conservation Areas and establish the foundation for future restoration efforts in the Everglades. The Final EIS considered the social, environmental, and economic impacts of the project. The No-Action Alternative and five Action Alternatives were considered in the Final EIS. All of the Action Alternatives included bridge construction and reconstruction of the remaining highway, with differences being in the bridge lengths and locations. Generally, where bridging of the Tamiami Trail is to occur, the bridges will be constructed adjacent to the existing roadway and the existing roadway and embankment will be removed once the bridge section is open to public traffic.

Agency Action

The NPS Preferred Alternative, Alternative 6e, is identified in the Final EIS. FHWA will prepare its own Record of Decision for the Selected Alternative in accordance with 40 CFR 1505.2.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Dated: February 5, 2014.

Karen A. Schmidt,

Director, Program Administration, Federal Highway Administration, Sterling, Virginia.

[FR Doc. 2014–03206 Filed 2–12–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service, Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Health Services Research and Development Service Scientific Merit Review Board will conduct in-person and teleconference meetings of its seven Health Services Research (HSR) subcommittees from 8:00 a.m. to approximately 5:00 p.m. (unless otherwise listed) on the dates indicated below, and at the VHA National Conference Center in Arlington, Virginia:

- HSR 1—Health Care and Clinical Management on March 4–5, 2014;
- HSR 2—Behavioral, Social, and Cultural Determinants of Health and Care on March 4–5, 2014;
- HSR 4—Mental and Behavioral Health on March 4–5, 2014;
- HSR 5—Health Care System Organization and Delivery; Research Methods and Models on March 4–5, 2014;
- Nursing Research Initiative (NRI) from 8:00 a.m. to 12:00 p.m. on Thursday, March 6, 2014;
- HSR 6—Post-acute and Long-term Care on Thursday, March 6, 2014;
- HSR 3—Healthcare Informatics on Friday, March 7, 2014; and
- HSR 7—Aging and Diminished Capacity in the Context of Aging on Friday, March 7, 2014.

The purpose of the Board is to review health services research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit, mission relevance, and the protection of human and animal subjects. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

Each subcommittee meeting of the Board will be open to the public the first day for approximately one-half hour at the start of the meeting on March 4 (HSRs 1, 2, 4, and 5), on March 6 (NRI and HSR 6), and on March 7 (HSRs 3 and 7), to cover administrative matters and to discuss the general status of the program. Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo ID for checking in. Please allow 15 minutes before the meeting begins for this process.

The remaining portion of each subcommittee meeting will be closed for the discussion, examination, reference to, and oral review of the intramural research proposals and critiques. During the closed portion of each subcommittee meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

No oral or written comments will be accepted from the public for either portion of the meetings. Those who plan to participate during the open portion of a subcommittee meeting should contact Faith Booker, Alternate Designated Federal Officer, Scientific Merit Review Board, Department of Veterans Affairs, Health Services Research and Development Service (10P9H), 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Faith.Booker@va.gov.* For further information, please call Mrs. Booker at (202) 443–5714.

Dated: February 10, 2014.

Jeffrey M. Martin,

Office Manager, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2014–03141 Filed 2–12–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, March 12, 2014, in conference room 530, at 810 Vermont Avenue NW., Washington, DC. The meeting will convene at 9:30 a.m. and end at 3:30 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The agenda will include a review of the VA research portfolio, Annual Report to the National Research Advisory Council, and special projects. The Council will also provide feedback on the direction/focus of VA's research initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested members of the public may submit written statements for the Council's review to Pauline Cilladi-Rehrer, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *pauline.cilladi-rehrer@va.gov.* Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Cilladi-Rehrer at (202) 443–5607.

Dated: February 10, 2014.

Jeffrey M. Martin,

Office Manager, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2014–03140 Filed 2–12–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service, Scientific Merit Review Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Health Services Research and Development Service Scientific Merit Review Board will conduct in-person and teleconference meetings of its seven Health Services Research (HSR) subcommittees from 8:00 a.m. to approximately 5:00 p.m. (unless otherwise listed) on the dates indicated below, and at the VHA National Conference Center in Arlington, Virginia:

- HSR 1—Health Care and Clinical Management on March 4–5, 2014;
- HSR 2—Behavioral, Social, and Cultural Determinants of Health and Care on March 4–5, 2014;
- HSR 4—Mental and Behavioral Health on March 4–5, 2014;
- HSR 5—Health Care System Organization and Delivery; Research Methods and Models on March 4–5, 2014;
- Nursing Research Initiative (NRI) from 8:00 a.m. to 12:00 p.m. on Thursday, March 6, 2014;
- HSR 6—Post-acute and Long-term Care on Thursday, March 6, 2014;
- HSR 3—Healthcare Informatics on Friday, March 7, 2014; and
- HSR 7—Aging and Diminished Capacity in the Context of Aging on Friday, March 7, 2014.

The purpose of the Board is to review health services research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit, mission relevance, and the protection of human and animal subjects. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

Each subcommittee meeting of the Board will be open to the public the first day for approximately one-half hour at the start of the meeting on March 4 (HSRs 1, 2, 4, and 5), on March 6 (NRI and HSR 6), and on March 7 (HSRs 3 and 7), to cover administrative matters and to discuss the general status of the program. Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo ID for checking in. Please allow 15 minutes before the meeting begins for this process.

The remaining portion of each subcommittee meeting will be closed for the discussion, examination, reference to, and oral review of the intramural research proposals and critiques. During the closed portion of each subcommittee meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

No oral or written comments will be accepted from the public for either portion of the meetings. Those who plan to participate during the open portion of a subcommittee meeting should contact Faith Booker, Alternate Designated Federal Officer, Scientific Merit Review Board, Department of Veterans Affairs, Health Services Research and Development Service (10P9H), 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Faith.Booker@va.gov.* For further information, please call Mrs. Booker at (202) 443–5714.

Rebecca Schiller,

Advisory Committee Management Officer.

[FR Doc. 2014–03184 Filed 2–12–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the Advisory Committee on Women Veterans will meet on March 25–27, 2014, in the G. V. ''Sonny'' Montgomery Conference Center, Room 230, at VA Central Office, 810 Vermont Avenue NW., Washington, DC, from 8:30 until 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include updates from the Veterans Health Administration, the Veterans Benefits Administration, the National Cemetery Administration and Staff Offices, and updates on recommendations from the 2012 Report of the Advisory Committee on Women Veterans. The Committee will also work on its 2014 Congressionally-mandated report.

No time will be allocated at this meeting for receiving oral presentations

from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton, VA, Center for Women Veterans (00W), 810 Vermont Avenue NW., Washington, DC 20420, or email at *00W@mail.va.gov,* or fax to (202) 273–7092. Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo ID for checking in. Please allow 15 minutes before the meeting begins for this process. Any member of the public who wishes to attend the meeting or wants additional information should contact Ms. Middleton at (202) 461–6193.

By Direction of the Secretary.

Jelessa M. Burney,

Advisory Committee Management Officer.

[FR Doc. 2014–03175 Filed 2–12–14; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 5; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket 100203070–4003–02]

RIN 0648–AY47

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 5

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

ACTION: Final rule.

SUMMARY: This rule implements approved measures in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP). Amendment 5 was developed by the New England Fishery Management Council (Council) to: Improve the collection of real-time, accurate catch information; enhance the monitoring and sampling of catch at-sea; and address bycatch issues through responsible management. The approved measures include: Revising fishery management program provisions (permitting provisions, vessel notification requirements, measures to address herring carrier vessels, regulatory definitions, and requirements for vessel monitoring systems); expanding vessel requirements to maximize observers' ability to sample catch at-sea; minimizing the discarding of unsampled catch (commonly known as slippage); addressing the incidental catch and bycatch of river herring; and revising the criteria for midwater trawl vessels' access to Northeast multispecies (groundfish) closed areas. NMFS disapproved three measures in Amendment 5. These measures included: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a requirement for 100-percent observer coverage on Category A and B vessels, coupled with an industry contribution of $325 per day toward observer costs. NMFS disapproved these three measures because it believes they are inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable law. Therefore, these three measures are not implemented in this action.

DATES: Effective March 17, 2014.

ADDRESSES: Copies of supporting documents used by the Council, including the Final Environmental Impact Statement (FEIS) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The FEIS/RIR/IRFA is also accessible via the internet at *http://www.nero.nmfs.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Northeast Regional Office and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Information on the Federal Vessel Monitoring System (VMS) reimbursement program is available from the Pacific States Marine Fisheries Commission, 205 SE. Spokane Street, Suite 100, Portland, OR 97202 (Web site: *http://www.psmfc.org/,* telephone number: 503–595–3100, fax number: 503–595– 3232).

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978- 281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2008 (73 FR 26082), the Council published a notice of intent (NOI) to prepare an EIS for Amendment 4 to the Atlantic Herring FMP to consider measures to: Improve long-term monitoring of catch (landings and bycatch) in the herring fishery, implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the MSA, and develop a sector allocation process or other limited access privilege program for the herring fishery. The Council subsequently conducted scoping meetings during May and June of 2008 to discuss and take comments on alternatives to these measures. After considering the complexity of the issues under consideration in Amendment 4, the Council voted on June 23, 2009, to split the action into two amendments to ensure the MSA requirements for complying with provisions for ACLs and AMs would be met by 2011. The ACL and AM components moved forward in Amendment 4, all other measures formerly considered in Amendment 4 were to be considered in Amendment 5. A supplementary NOI was published on December 28, 2009, (74 FR 68577) announcing the split between the amendments, and that impacts associated with alternatives considered in Amendment 5 would be analyzed in an EIS. At that time, measures considered under Amendment 5 included: A catch-monitoring program; measures to address river herring bycatch; midwater trawl access to groundfish closed areas; and measures to address interactions with the Atlantic mackerel (mackerel) fishery.

Following further development of Amendment 5, the Council conducted MSA public hearings in March 2012, National Environmental Policy Act (NEPA) public hearings at the beginning of June 2012, and, following the public comment period on the draft EIS (DEIS) that ended on June 4, 2012, the Council adopted Amendment 5 on June 20, 2012. The Council submitted Amendment 5 to NMFS for review on September 10, 2012. Following a series of revisions, the Council submitted a revised version of Amendment 5 to NMFS on March 25, 2013. A Notice of Availability (NOA) for Amendment 5, as submitted by the Council for review by the Secretary of Commerce (Secretary), was published on April 22, 2013 (78 FR 23733), with a comment period ending June 21, 2013. A proposed rule for Amendment 5 was published on June 3, 2013 (78 FR 33020), with a comment period ending July 18, 2013. On July 18, 2013, NMFS partially approved Amendment 5 on behalf of the Secretary. NMFS sent a letter to the Council on July 19, 2013, informing it of the partial approval of Amendment 5.

The Council has spent several years developing this amendment, and it contains many measures that would improve herring management and that can be administered by NMFS. NMFS supports improvements to fishery dependent data collections, either through increasing reporting requirements or expanding the at-sea monitoring of the herring fishery. NMFS also shares the Council's concern for reducing bycatch and unnecessary discarding. However, three measures in Amendment 5 lacked adequate rationale or development by the Council, and NMFS had utility and legal concerns with the implementation of these measures. These measures include: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a requirement for 100-percent observer coverage on Category A (All Areas Limited Access Herring Permit) and B (Areas 2/3 Limited Access Herring Permit) vessels, coupled with an industry contribution of a target maximum of $325 per day toward observer costs. NMFS expressed

potential concerns with these measures throughout the development of this amendment, but these measures have strong support from some stakeholders. The proposed rule for Amendment 5 described potential concerns about these measures' consistency with the MSA and other applicable law. After review of public comment, NMFS determined these three measures must be disapproved because they were inconsistent with the MSA and other applicable law. On September 20, 2013, NMFS sent a letter to the Council with recommendations on how these measures could be revised to address NMFS's concerns. If the Council chooses to revise these measures, NMFS will work with the Council to design effective measures to help improve management of the herring fishery. Revised measures could be addressed in upcoming Council actions. Whether that action would be an amendment or framework would depend on the scope of the revised measure.

Approved Measures

This final rule implements approved management measures that:

- Modify the herring transfer at-sea and offload definitions to better document the transfer of fish;
- Expand possession limit restrictions to all vessels working cooperatively, consistent with pair trawl requirements;
- Eliminate the vessel monitoring system (VMS) power-down provision for limited access herring vessels, consistent with VMS provisions for other fisheries;
- Establish an ''At-Sea Herring Dealer'' permit to better document the at-sea transfer and sale of herring;
- Establish an ''Areas 2/3 Open Access Permit'' to reduce the potential for the regulatory discarding of herring in the mackerel fishery;
- Allow vessels to enroll as herring carriers with either a VMS declaration or letter of authorization to increase operational flexibility;
- Expand pre-trip and pre-landing notification requirements, as well as adding a VMS gear declaration, to all limited access herring vessels and vessels issued an Areas 2/3 Open Access Permit to help facilitate monitoring;
- Establish an advance notice requirement for the observer pre-trip notification at 48 hr;
- Expand vessel requirements related to at-sea observer sampling to help ensure safe sampling and improve data quality;
- Establish measures to minimize the discarding of catch before it has been made available to observers for sampling (known as slippage);
- Establish a framework provision for a river herring catch cap, such that a river herring catch cap may be implemented in a future framework;
- Allow the existing river herring bycatch avoidance program to investigate providing real-time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas; and
- Expand at-sea sampling of midwater trawl vessels fishing in groundfish closed areas.

1. Adjustments to the Fishery Management Program

Amendment 5 revises several existing fishery management provisions, such as regulatory definitions, reporting requirements, and VMS requirements, and establishes new provisions, such as additional herring permits and increased operational flexibility for herring carriers, to better administer the herring fishery.

Definitions

Amendment 5 revises the regulatory definitions of transfer at-sea and offload to clarify these activities for the herring fishery. This action defines a herring transfer at-sea as a transfer of fish from one herring vessel (including fish from the hold, deck, codend, or purse seine) to another vessel, with the exception of fish moved between vessels engaged in pair trawling. This action also defines a herring offload as removing fish from a herring vessel to be sold to a dealer. Both transfers at-sea and offloading are frequent activities in the herring fishery, and the differences between these activities are not always well understood. These definition revisions attempt to more clearly differentiate between activities that trigger reporting requirements. By clarifying these activities for the herring fishery, fishery participants are more likely to report these activities consistently, thereby improving reporting compliance, helping ensure data accuracy and completeness, and lessening the likelihood of double counting herring catch.

Herring Carriers

Amendment 5 revises operating provisions for herring carrier vessels by establishing an At-Sea Herring Dealer permit for herring carriers that sell fish, allowing vessels to declare herring carrier trips via VMS, and exempting herring carriers from vessel trip report (VTR) requirements. Currently, herring carriers may receive and transport herring caught by another fishing vessel, provided the herring carrier has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and has been issued a letter of authorization (LOA) from the NMFS Regional Administrator (RA). The herring carrier LOA exempts the herring carrier from possession limits and catch reporting requirements associated with the vessel's herring permit. To allow time for the processing, issuance, and, if necessary, cancellation of the LOAs, the herring carrier LOAs have a minimum 7-day enrollment period. During the LOA enrollment period, vessels may only act as herring carriers and they may not fish for any species, or transport species other than herring and certain groundfish species, including haddock and up to 100 lb (45 kg) of other regulated groundfish species (as specified at § 648.86(a)(3) and (k)).

This action allows vessels to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. If a vessel chooses to declare a herring carrier trip via VMS, it would be allowed to receive and transport herring caught by another fishing vessel provided the herring carrier has been issued a herring permit, does not have any gear on board capable of catching or processing fish, and only transports herring or groundfish, including haddock and up to 100 lb (45 kg) of other regulated groundfish species (as specified at § 648.86(a)(3) and (k)). Consistent with other Northeast Region VMS requirements, once a vessel declares a herring carrier trip via VMS, it is bound to the VMS operating requirements, specified at § 648.10, for the remainder of the fishing year. By declaring a herring carrier trip via VMS, a vessel would not be bound by the 7-day enrollment period of the LOA. A vessel declaring a herring carrier trip via VMS may only act as a herring carrier and may not fish for any species or transport species other than herring or groundfish. This measure would increase operational flexibility by allowing vessels to schedule herring carrier trips on a trip-by-trip basis. Vessels that do not possess a VMS or choose not to declare a herring trip via VMS may still act as carriers by obtaining a herring carrier LOA from the NMFS RA and operating in accordance with the LOA requirements.

Herring carriers typically receive herring from harvesting vessels and transport those herring to Federal dealers. The harvesting vessel reports those herring as catch, and dealers report those herring as a purchase. NMFS verifies the amount of herring

caught by comparing the amount reported by the harvesting vessel against the amount reported by the dealer. If the herring transported by a herring carrier is not purchased by a Federal dealer, then NMFS does not have any dealer reports to compare to the vessel reports. This action establishes an At-Sea Atlantic Herring Dealer Permit that would be required for herring carriers that sell herring, rather than deliver those fish on behalf of a harvesting vessel to a dealer for purchase. This permit requires compliance with Federal dealer reporting requirements. Vessels that have been issued both an At-Sea Atlantic Herring Dealer Permit and a Federal fishing permit would be required to fulfill the reporting requirements of both permits, as appropriate. NMFS expects the reporting requirements for the At-Sea Atlantic Herring Dealer Permit to minimize instances where catch is reported by harvesting vessels but which NMFS cannot match to dealer reports; thereby improving catch monitoring in the herring fishery.

Amendment 5 exempts herring carriers from the VTR requirements associated with their vessel permits while the vessel is operating in accordance with the herring carrier permit requirements. NMFS requires vessels issued herring permits to submit weekly VTRs to NMFS. However, dealers have incorrectly attributed catch to herring carrier vessels, rather than correctly attributing catch to the appropriate harvesting vessel, by reporting the herring carrier's VTR serial number rather than the VTR serial number of the harvesting vessel. To help prevent catch being attributed to the wrong vessel and to minimize data mismatches between vessel and dealer reports, this action exempts herring carriers from the VTR requirement associated with their herring permit when they are enrolled as a herring carrier with an LOA or by declaring a herring carrier trip via VMS. Dealers would still be responsible for correctly reporting the VTR serial number of the vessel that harvested the herring.

Open Access Herring Permits

Amendment 5 establishes a new open access herring permit for vessels engaged in the mackerel fishery and re-names the current open access herring permit. The permit formerly known as the Open Access Herring Permit (Category D) allows a vessel to possess up to 6,600 lb (3 mt) of herring per trip, limited to one landing per calendar day, in or from any of the herring management areas. All the provisions and requirements of this open access herring permit remain the same, but this action renames this permit as the All Areas Open Access Herring Permit (Category D), and creates a new open access permit for mackerel fishery participants fishing in herring management Areas 2 and 3 called the Areas 2/3 Open Access Permit (Category E).

The new Areas 2/3 Open Access Herring Permit (Category E) allows vessels to possess up to 20,000 lb (9 mt) of herring per trip, limited to one landing per calendar day, in or from herring management Areas 2 and 3. Vessels that have not been issued a limited access herring permit, but that have been issued a limited access mackerel permit, are eligible for the Areas 2/3 Open Access Herring Permit. Vessels may hold both open access herring permits at the same time.

In its letter to NMFS deeming the proposed regulations for Amendment 5, the Council requested that NMFS clarify the reporting and monitoring requirements associated with the new Category E permit. Amendment 5 states that Category E permits would be subject to the same notification and reporting requirements as Category C (Incidental Catch Limited Access Herring Permit) vessels. Therefore, this action establishes notification and reporting requirements for the Category E permit that are consistent with the requirements for Category C vessels, including the requirement to possess and maintain a VMS, VMS activity declaration and pre-landing requirements, and catch reporting requirements (i.e., submission of daily VMS catch reports and weekly VTRs). Reimbursement for VMS units is available on a first come, first serve, basis until the funds are depleted. More information on the VMS reimbursement program is available from the Pacific States Marine Fisheries Commission (see **ADDRESSES**) and from the NMFS VMS Support Center, which can be reached at 888–219–9228.

Amendment 5 does not state that Category E permits would be subject to the same catch monitoring requirements as Category C vessels, including the proposed vessel requirements to help improve at-sea sampling and measures to minimize the discarding of catch before it has been made available to observers for sampling. When describing or analyzing catch monitoring requirements, Amendment 5 does not describe extending catch monitoring requirements for Category C vessels to Category E vessels, nor does it analyze the impacts of catch monitoring requirements on Category E vessels. Because the Category C catch monitoring requirements were not discussed or analyzed in relation to Category E vessels, this action did not propose, and thus does not extend, those catch monitoring requirements to Category E vessels.

There is significant overlap between the mackerel and herring fisheries. Mackerel and herring co-occur, particularly during January through April, which is a time that vessels often participate in both fisheries. Not all vessels participating in the mackerel fishery qualify for a limited access herring permit because they either did not have adequate herring landings or they are new participants in the mackerel fishery. Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the open access permit's 6,600-lb (3-mt) possession limit. The creation of the new Areas 2/3 Open Access Herring Permit is intended to minimize the potential for regulatory discarding of herring by limited access mackerel vessels that did not qualify for a limited access herring permit, consistent with MSA National Standard 9's requirement to minimize bycatch to the extent practicable.

Trip Notification and VMS Requirements

Amendment 5 expands and modifies trip notification and VMS requirements for vessels with herring permits to assist with observer deployment and provide enforcement with advance notice of trip information to facilitate enforcement monitoring of landings. Currently, vessels with Category A or B permits, as well as any vessels fishing with midwater trawl gear in Areas 1A, 1B, and/or 3, are required to contact NMFS at least 72 hr in advance of a fishing trip to request an observer. This action expands this pre-trip observer notification requirement such that vessels with limited access herring permits; vessels with open access Category D permits fishing with midwater trawl gear in Areas 1A, 1B, and/or 3; vessels with open access Category E permits; and herring carrier vessels are required to contact NMFS at least 48 hr in advance of a fishing trip to request an observer. This measure would assist NMFS's scheduling and deployment of observers across the herring fleet, with minimal additional burden on the industry, helping ensure that observer coverage targets for the herring fishery are met. NMFS intends for the change from a 72-hr notification requirement to a 48-hr notification requirement to allow vessels more flexibility in their trip planning and

scheduling. The list of information that must be provided to NMFS as part of this pre-trip observer notification remains the same as before this change and is described in the regulations. Vessels with herring permits currently contact NMFS via phone; the phone number to contact NMFS will be provided in the small entity compliance guide. If a vessel is required to notify NMFS to request an observer before its fishing trip, but it does not notify NMFS before beginning the fishing trip, that vessel is prohibited from possessing, harvesting, or landing herring on that trip. If a fishing trip is cancelled, a vessel representative must notify NMFS of the cancelled trip, even if the vessel is not selected to carry an observer. All waivers or selection notices for observer coverage will be issued by NMFS to the vessel via VMS so the vessels have an on-board verification of either the observer selection or waiver. However, a vessel issued a Category A or B permit on a declared herring trip; or a vessel issued any herring permit fishing with midwater trawl gear in Herring Management Areas 1A, 1B, and/or 3; is still subject to the more restrictive 72-hr notification associated with the groundfish midwater trawl or purse seine gear exempted fisheries specified at § 648.80(d)–(e).

Vessels with limited access herring permits are currently subject to a VMS activity declaration. Amendment 5 expands that VMS activity declaration requirement and adds a gear code declaration. Therefore, under Amendment 5, vessels with limited access herring permits, Category E permits, and vessels declaring herring carrier trips via VMS must notify NMFS via VMS of their intent to participate in the herring fishery prior to leaving port on each trip by entering the appropriate activity and gear codes in order to harvest, possess, or land herring on that trip.

Currently, vessels with Category A or B permits; and vessels with Category C permits fishing with midwater trawl gear in Areas 1A, 1B, and/or 3; are subject to a pre-landing VMS notification requirement. This action expands this pre-landing VMS notification requirement so that vessels with limited access herring permits, Category E permits, and vessels declaring herring carrier trips via VMS must notify NMFS Office of Law Enforcement via VMS of the time and place of offloading at least 6 hr prior to landing or, if fishing ends less than 6 hr before landing, as soon as the vessel stops catching fish.

Limited access herring vessels are currently able to turn off (i.e., power down) their VMS when in port, if they do not hold other permits requiring continuous VMS reporting. Vessels authorized to power down their VMS in port must submit a VMS activity declaration prior to leaving port. This action prohibits vessels with herring permits from powering down their VMS when in port, unless specifically authorized by NMFS. If a vessel will be out of the water for more than 72 hr, a vessel owner must request a letter of exemption (LOE) from NMFS to power down its VMS. The application for a ''VMS Power Down Exemption Request'' is available on the NMFS Northeast Regional Office Web site (see **ADDRESSES**). Herring vessels are prohibited from powering down their VMS until they have received an LOE from NMFS. Additionally, a vessel owner can sign a herring vessel out of the VMS program for a minimum of 30 days by requesting and obtaining an LOE from NMFS. When a VMS unit is powered down, consistent with an LOE, that vessel is prohibited from leaving the dock until the VMS unit is powered back up and a VMS activity declaration is sent. This action prohibits herring vessels from powering down VMS units in port to improve the enforcement of herring regulations and help make herring VMS regulations consistent with VMS regulations in other Northeast fisheries.

Possession Limits

All herring vessels engaged in pair trawling must be issued herring permits, and their harvest is limited by the most restrictive possession limit associated with those permits. Amendment 5 expands this restriction by requiring that each vessel working cooperatively in the herring fishery; including vessels pair trawling, purse seining, and transferring herring at-sea; must be issued a herring permit and is subject to the most restrictive possession limit associated with the permits issued to those vessels working cooperatively. This measure establishes consistent requirements for vessels working cooperatively in the herring fishery and is intended to improve enforcement of herring possession limits for multi-vessel operations.

2. Adjustments to At-Sea Catch Monitoring

Two of the primary goals of Amendment 5 are to improve catch monitoring in the herring fishery and minimize bycatch and bycatch mortality to the extent practicable. Amendment 5 revises vessel requirements to assist observers sampling at-sea and establishes new measures to minimize the discarding of catch before it has been sampled by an observer.

Northeast fishery regulations specify requirements for vessels carrying NMFS-approved observers, such as providing observers with food and accommodations equivalent to those made available to the crew; allowing observers to access the vessel's bridge, decks, and spaces used to process fish; and allowing observers access to vessel communication and navigations systems. This action expands these requirements, such that vessels issued limited access permits and carrying NMFS-approved observers must provide observers with the following: (1) A safe sampling station adjacent to the fish deck, and a safe method to obtain and store samples; (2) reasonable assistance to allow observers to complete their duties; (3) advance notice when pumping will start and end and when sampling of the catch may begin; and (4) visual access to net/codend or purse seine and any of its contents after pumping has ended, including bringing the codend and its contents aboard if possible. Additionally, this action requires vessels issued limited access permits working cooperatively in the herring fishery to provide NMFS-approved observers with the estimated weight of each species brought on board or released on each tow. NMFS expects these measures to help improve at-sea catch monitoring in the herring fishery by enhancing the observer's ability to collect quality data in a safe and efficient manner.

This action, with limited exceptions, requires limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. The Council recommended this measure to improve the quality of at-sea monitoring data by reducing the discarding of unsampled catch. If catch is discarded before it has been made available to the observer, that catch is defined as slippage. Fish that cannot be pumped and remain in the net at the end of pumping operations are considered operational discards and not slippage. Discards that occur after catch has been brought on board and sorted are also not considered slippage. Vessels may make test tows without pumping catch on board, provided that all catch from test tows is available to the observer when the following tow is brought aboard. Some stakeholders believe that slippage is a serious problem in the herring fishery because releasing catch before an observer can estimate its species composition undermines accurate catch accounting.

This action allows catch to be slipped if: (1) Bringing catch aboard

compromises safety; (2) mechanical failure prevents the catch from being brought aboard; or (3) spiny dogfish clog the pump and prevent the catch from being pumped aboard. If catch is slipped, the vessel operator is required to complete a released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit must detail: (1) Why catch was slipped, (2) an estimate of the quantity and species composition of the slipped catch, and (3) the time and location of the slipped catch.

In 2010, the Northeast Fisheries Observer Program (NEFOP) revised the training curriculum for observers deployed on herring vessels to focus on effectively sampling in high-volume fisheries. NEFOP also developed a discard log to collect detailed information on discards in the herring fishery, including slippage, such as why catch was discarded, the estimated amount of discarded catch, and the estimated composition of discarded catch. Recent slippage data collected by observers indicate that information about these events, and the amount and composition of fish that are slipped, has improved; and the number of slippage events by limited access herring vessels has declined. Given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch, rather than released catch affidavits, provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it will provide enforcement with a sworn statement regarding the operator's decisions and may help NMFS understand why slippage occurs.

NMFS expects that prohibiting slippage when vessels are carrying an observer will help reduce slippage events in the herring fishery, and thus improve the quality of observer catch data, especially data on bycatch species encountered in the herring fishery. NMFS also expects the released catch affidavit to help provide insight into when and why slippage occurs. Additionally, NMFS expects that the slippage prohibition will help minimize bycatch, and bycatch mortality, to the extent practicable in the herring fishery.

3. Measures To Address River Herring Interactions

Amendment 5 establishes several measures to address the catch of river herring in the herring fishery to minimize bycatch and bycatch mortality to the extent practicable. River herring (the collective term for alewife and blueback herring) are anadromous species that may co-occur seasonally with herring and are sometimes harvested as a non-target species in the herring fishery. When river herring are encountered in the herring fishery, they are either discarded at sea (bycatch) or, because they closely resemble herring, they are retained and sold as part of the herring catch (incidental catch). In contrast to bycatch, there is no MSA requirement to reduce incidental catch. Often, the term ''incidental catch'' is used interchangeably with ''bycatch.'' It is important to recognize this distinction between bycatch and incidental catch in the Atlantic herring fishery when considering whether bycatch in this fishery is being reduced to the extent practicable. While measures in Amendment 5 are not expressly designed to address the catch of shad (American and hickory) in the herring fishery, measures to reduce the catch of river herring are expected to also reduce the catch of shad because of the overlapping distributions of river herring and shad.

River herring are managed by the Atlantic States Marine Fisheries Commission (ASMFC) and the individual Atlantic Coast states. According to the most recent ASMFC river herring stock assessment (May 2012), river herring populations have declined from historic levels and many factors will need to be addressed to allow their recovery, including fishing (in both state and Federal waters), river passageways, water quality, predation, and climate change. In an effort to aid in the recovery of depleted or declining stocks, the ASMFC, in cooperation with individual states, prohibited state waters commercial and recreational fisheries that did not have approved sustainable fisheries management plans, effective January 1, 2012. NMFS considers river herring to be a species of concern, but recently (78 FR 48944, August 12, 2013) determined that listing river herring, as either threatened or endangered, under the Endangered Species Act is not warranted at this time. NMFS is establishing a technical working group and will continue to work closely with the ASMFC and others to develop a long-term, dynamic conservation plan for river herring from Canada to Florida. The working group will evaluate the impact of ongoing restoration and conservation efforts, as well as new fisheries management measures, which should benefit the species. It will also review new information produced from ongoing research, including genetic analyses, ocean migration pattern research, and climate change impact studies, to assess whether recent reports, showing higher river herring counts in the last 2 years, represent sustained trends. NMFS intends to revisit its river herring status determination within the next 5 years.

This action establishes River Herring Monitoring/Avoidance Areas for the herring fishery, which are areas established for two-month intervals to monitor river herring catch and encourage river herring avoidance. The coordinates for these areas are described in the regulations at § 648.200(f)(4), and are based on NEFOP data from between 2005 and 2009 as to where river herring catch (greater than 40 lb (18 kg)) occurred in the herring fishery. NMFS expects the slippage prohibition and released catch affidavit requirement to improve NMFS's understanding of river herring encounters in the herring fishery, especially in the River Herring Monitoring/Avoidance Areas. As the Council and NMFS learn more about river herring catch in the herring fishery, vessels fishing in the River Herring Monitoring/Avoidance Areas may be subject to additional regulations to further reduce river herring catch in the herring fishery. While the magnitude of the effect of river herring catch and bycatch on river herring populations is unknown, minimizing river herring catch and bycatch to the extent practicable is a goal of Amendment 5.

Amendment 5 establishes a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance strategy in the herring fishery. A river herring bycatch avoidance strategy will be developed and evaluated by the Council, in cooperation with participants in the herring fishery—specifically the Sustainable Fisheries Coalition (SFC); the Massachusetts Division of Marine Fisheries (MADMF); and the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). This measure is based on the existing river herring bycatch avoidance program involving the SFC, MADMF, and SMAST. This existing program is voluntary and seeks to reduce river herring and shad bycatch by working within current fisheries management programs, without the need for additional regulatory requirements. The river herring bycatch avoidance program includes portside sampling, real-time communication with the SFC on river herring distribution and encounters in the herring fishery, and data collection to evaluate whether oceanographic features may predict high rates of river herring encounters.

Phase I of the river herring bycatch avoidance strategy is: (1) Monitoring and sampling of herring catch from the River Herring Monitoring/Avoidance Areas; (2) providing for adjustments to the River Herring Monitoring/Avoidance Area and river herring bycatch avoidance strategies through a future framework adjustment to the Herring FMP; and (3) Council staff collaboration with SFC, MA DMF, and SMAST to support the ongoing project evaluating river herring bycatch avoidance strategies.

Upon completion of the existing SFC/MA DMF/SMAST river herring bycatch avoidance project, Phase II of this measure will begin. Phase II involves the Council's review and evaluation of the results from the river herring bycatch avoidance project, and a public meeting to consider a framework adjustment to the Herring FMP to establish river herring bycatch avoidance measures. Measures that may be considered as part of the framework adjustment include: (1) Adjustments to the River Herring Monitoring/Avoidance Areas; (2) mechanisms to track herring fleet activity, report bycatch events, and notify the herring fleet of encounters with river herring; (3) the utility of test tows to determine the extent of river herring bycatch in a particular area; (4) the threshold for river herring bycatch that would trigger the need for vessels to be alerted to move out of the Area; and (5) the distance and/or time that vessels would be required to move from the Areas.

Amendment 5 also establishes the ability to consider implementing a river herring catch cap for the herring fishery in a future framework adjustment to the Herring FMP. Amendment 1 to the Herring FMP identified catch caps as management measures that could be implemented via a framework or the specifications process, with a focus on a haddock catch cap for the herring fishery. Amendment 5 contains a specific alternative that considers implementing a river herring catch cap through a framework or the specifications process. On the basis of the explicit consideration of a river herring catch cap, and the accompanying analysis in Amendment 5, NMFS has advised the Council that it would be more appropriate to consider a river herring catch cap in a framework subsequent to the implementation of Amendment 5.

Amendment 5 contains preliminary analysis of a river herring catch cap, but additional development of a range of alternatives (e.g., amount of cap, seasonality of cap, consequences of harvesting cap) and the environmental impacts (e.g., biological, economic) of a river herring catch cap is necessary prior to implementation. Therefore, it is more appropriate to consider implementing a river herring catch cap through a framework, rather than through the specifications. The Council may begin development of the river herring catch cap framework immediately, but the framework cannot be implemented prior to the implementation of Amendment 5.

During the development of Amendment 5, the ASMFC began work on a new stock assessment for river herring. It was hoped that the new assessment would help inform the analysis to determine a reasonable range of alternatives for a river herring catch cap. The ASMFC's river herring assessment was completed in May 2012, and the Council took final action on Amendment 5 in June of 2012. Therefore, there was not enough time to review the assessment, and if appropriate, incorporate its results in the development of a river herring catch cap in Amendment 5. However, as noted below, the Council was later able to consider this assessment when developing a river herring catch cap.

The Mid-Atlantic Fishery Management Council is also considering establishing a river herring catch cap for its mackerel fishery. Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish FMP will allow the Mid-Atlantic Council to consider river herring and shad catch caps for the mackerel fishery. Due to the mixed nature of the herring and mackerel fisheries, especially during January through April, the potential for the greatest river herring catch reduction would come from the implementation of a joint river herring catch cap for both the herring and mackerel fisheries. On May 23, 2013, the New England and the Mid-Atlantic Councils' technical teams for the herring and mackerel fisheries met to begin development of river herring catch caps. The Mid-Atlantic Council met on June 12, 2013, and recommended establishing a river herring/shad catch cap of 236 mt for the mackerel fishery in 2014.

At its June 2013 meeting, the Council discussed the development of river herring catch caps in Framework 3 to the Herring FMP. The Council considered establishing catch caps by area and gear, as well as establishing catch caps for both river herring and shad. While Amendment 5 did not explicitly consider catch caps for shad, because river herring and shad are closely related species, and the nature of their encounters with the herring fishery are similar, Framework 3 will evaluate the technical merits of developing a shad catch cap for the herring fishery. At its September 2013 meeting, the Council took final action on Framework 3 and recommended establishing river herring and shad catch caps for midwater and bottom trawl gear in the herring fishery. Framework 3, if approved, is expected to be implemented in the spring or summer of 2014. Based on the ASMFC's recent river herring assessment, data do not appear to be robust enough to determine a biologically based river herring catch cap and/or to evaluate the potential effects on river herring populations of such a catch cap on a coast-wide scale. Still, the Council supports establishing a river herring catch cap as soon as possible to encourage avoidance of river herring and shad to minimize bycatch and bycatch mortality.

One of the primary goals of Amendment 5 is to address bycatch issues through responsible management, consistent with the MSA National Standard 9 requirement to minimize bycatch and mortality of unavoidable bycatch to the extent practicable. Monitoring and avoidance are critical steps to a better understanding of the nature and extent of bycatch in this fishery in order to sufficiently analyze and, if necessary, address bycatch issues. The Council considered other measures to address river herring bycatch in Amendment 5, including closed areas. Because the seasonal and inter-annual distribution of river herring is highly variable in time and space, the Council determined that the most effective measures in Amendment 5 to address river herring bycatch would be those that increase at-sea sampling, bycatch accounting, and promote cooperative efforts with the industry to minimize bycatch to the extent practicable.

4. Measures To Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 expands the existing requirements for midwater trawl vessels fishing in Groundfish Closed Area I to all herring vessels fishing with midwater trawl gear in the Groundfish Closed Areas. These Closed Areas include: Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and Western Gulf of Maine Closure Area. The coordinates for these areas are defined at § 648.81(a)–(e). This action requires vessels with a herring permit fishing with midwater trawl gear in the Closed Areas to carry a NMFS-approved observer and bring all catch aboard the vessel and make it available for sampling by an observer. Herring

vessels not carrying a NMFS-approved observer may not fish for, possess, or land fish in or from the Closed Areas. Vessels may make test tows without pumping catch on board, provided that all catch from test tows is available to the observer when the next tow is brought aboard. This action allows catch to be released before it was pumped aboard the vessel if: (1) Pumping the catch aboard could compromise safety, (2) mechanical failure prevents the catch from being pumped aboard, or (3) spiny dogfish have clogged the pump and prevent the catch from being pumped aboard. But if catch is released for any of the reasons stated above, the vessel operator is required to immediately exit the Closed Area. The vessel may continue to fish, but it may not fish in any Closed Area for the remainder of that trip. Additionally, vessels that release catch before it has been sampled by an observer must complete a midwater trawl released catch affidavit within 48 hr of the end of the fishing trip. The released catch affidavit details: (1) Why catch was released, (2) an estimate of the weight of fish caught and released, and (3) the time and location of the released catch.

Given NEFOP's recent training changes and its addition of a discard log, NMFS believes that observer data on slipped catch, rather than released catch affidavits, provide the best information to account for discards. However, there is still a compliance benefit to requiring a released catch affidavit because it would provide enforcement with a sworn statement regarding the operator's decisions and may help to understand why slippage occurs.

Under current practice, as well as under the proposed revisions to the standardized bycatch reporting methodology (SBRM) that are being developed, the Northeast Fisheries Science Center (NEFSC) would allocate all existing and specifically identified observer funding to support SBRM observer coverage. Therefore, herring vessels would be assigned observers based on SBRM coverage, including trips by midwater trawl vessels into the Closed Areas. All trips by midwater trawl vessels into the Closed Areas would have observer coverage, thereby increasing observer coverage in the Closed Areas. But until there is additional funding available, the number of trips midwater trawl vessels can make into the Closed Areas would be limited by SBRM funding. Additional observer coverage specifically for midwater trawl trips into the Closed Areas would be possible after SBRM monitoring is fully funded or if funds are specifically appropriated for such trips.

If a midwater trawl vessel cannot fish in the Closed Areas on a particular trip because an observer is not assigned to that trip, any negative economic impact to that vessel is expected to be minimal. Analyses in the FEIS indicate that less than 10-percent of herring fishing effort occurs in the Closed Areas and less than 13-percent of the annual herring revenue comes from trips into the Closed Areas. Midwater trawl vessels will still have access to the Closed Areas during SBRM covered trips, even if there are less SBRM covered trips than in years past. Additionally, midwater trawl vessels can fish outside the Closed Areas without an observer.

Analyses in the Amendment 5 FEIS suggest that midwater trawl vessels are not catching significant amounts of groundfish either inside or outside the Closed Areas. Additionally, the majority of groundfish catch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap for the herring fishery. However, the Council believes it is important to determine the extent and nature of bycatch in the herring fishery. This measure still allows the herring midwater trawl fishery to operate in the Closed Areas, but it ensures that opportunities for catch retention and sampling are maximized.

5. Adjustments to List of Measures Modified Through Framework Adjustments or Specifications

Amendment 5 specifies the ability to modify management measures revised or established by Amendment 5 through a framework adjustment to the Herring FMP or the specifications process.

The measures that could be modified through a framework include: (1) Changes to vessel trip notification and declaration requirements, (2) adjustments to measures to address slippage, (3) River Herring Monitoring/Avoidance Areas, (4) provisions for the river herring bycatch avoidance program, (5) changes to criteria/provisions for access to the Groundfish Closed Areas, and (6) river herring catch caps.

The list of measures that could be modified through the specifications process include: (1) Possession limits; (2) River Herring Monitoring/Avoidance Areas; and (3) river herring catch caps.

Disapproved Measures

The following sections detail why NMFS disapproved three measures that were proposed as part of Amendment 5. NMFS disapproved these three measures because it found the measures to be inconsistent with the MSA and other applicable law. The proposed rule for Amendment 5 described NMFS's concerns with these measures' consistency with the MSA and other applicable law. After review of public comment, NMFS, on behalf of the Secretary, disapproved these measures; therefore, this final rule excludes implementing regulations for these measures.

1. Increased Observer Coverage Requirements

As described previously, the NEFSC determines observer coverage levels in the herring fishery based on the SBRM. Observer coverage in the herring fishery is currently fully funded by NMFS. Amendment 5 proposed increasing observer coverage in the herring fishery by requiring 100-percent observer coverage on Category A and B vessels. Many stakeholders believe this measure is necessary to accurately determine the extent of bycatch and incidental catch in the herring fishery. The Council recommended this measure to gather more information on the herring fishery so that it may better evaluate and, if necessary, implement additional measures to address issues involving catch and discards. The 100-percent observer requirement is coupled with a target maximum industry contribution of $325 per day. There are two types of costs associated with observer coverage: (1) Observer monitoring costs, such as observer salary and travel costs, and (2) NMFS support and infrastructure costs, such as observer training and data processing. The monitoring costs associated with an observer in the herring fishery are higher than $325 per day. Cost-sharing of monitoring costs between NMFS and the industry would violate the Antideficiency Act. Therefore, there is no current legal mechanism to allow cost-sharing of monitoring costs between NMFS and the industry.

Throughout the development of Amendment 5, NMFS advised the Council that Amendment 5 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Some commenters claim that the $325 per day industry contribution was not a limit, but a target, and that the Council intended the industry to pay whatever was necessary to ensure 100-percent observer coverage. NMFS disagrees, and does not believe the amendment specifies that the industry would pay all the monitoring costs associated with 100-percent observer coverage, nor does

it analyze the economic impacts of the industry paying all the monitoring costs. The FEIS for Amendment 5 analyzed alternatives with the industry paying $325 per day or $1,200 per day (estimated sum of observer monitoring costs and NMFS support and infrastructure costs), but it did not analyze a range of alternatives that would approximate total monitoring costs. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring NMFS to pay for 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 5 did not identify a funding source to cover the costs of increased observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, NMFS had to disapprove the 100-percent observer coverage requirement. With the disapproval of this measure, this action maintains the existing SBRM observer coverage levels and Federal observer funding for the herring fishery.

Recognizing funding challenges, Amendment 5 specified status quo observer coverage levels and funding for up to 1 year following the implementation of Amendment 5, with the 100-percent observer coverage and partial industry funding requirement to become effective 1 year after the implementation of Amendment 5. During that year, the Council and NMFS, in cooperation with the industry, were to attempt to develop a way to fund 100-percent observer coverage.

During 2013, a working group was formed to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring fishery; the group includes staff from the New England and Mid-Atlantic Councils and NMFS. To further explore the legal issues surrounding industry-funded observer coverage, NMFS formed a working group of Northeast Regional Office, NEFSC, General Counsel, and Headquarters staff. The NMFS working group identified an administrative mechanism to allow for industry funding of observer monitoring costs in Northeast Region fisheries, as well as a potential way to help offset funding costs that would be borne by the industry, subject to available funding. This administrative mechanism would be an option to fund observer coverage targets that are higher than SBRM coverage levels. The mechanism to allow for industry-funded observer coverage is a potential tool for all Northeast Region FMPs, but it would need to be added to each FMP through an omnibus amendment to make it an available tool, should the Council want to use it. Additionally, this omnibus amendment could establish the observer coverage targets for Category A and B herring vessels.

In a September 20, 2013, letter to the Council, NMFS offered to be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs. At its September 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. At this time, NMFS expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Additionally, other Amendment 5 measures implemented in this action help improve monitoring in the herring fishery. These measures include the requirement for vessels to contact NMFS at least 48 hr in advance of a fishing trip to facilitate the placement of observers, observer sample station and reasonable assistance requirements to improve an observer's ability collect quality data in a safe and efficient manner, and the slippage prohibition and the sampling requirements for midwater trawl vessels fishing in groundfish closed areas to minimize the discarding of unsampled catch.

The same measure that would have required 100-percent observer coverage, coupled with a $325 contribution by the industry, would have also required that: (1) The 100-percent coverage requirement be re-evaluated by the Council 2 years after implementation; (2) the 100-percent coverage requirement be waived if no observers were available, but not waived for trips that enter the River Herring Monitoring/Avoidance Areas; (3) observer service provider requirements for the Atlantic sea scallop fishery apply to observer service providers for the herring fishery; and (4) states be authorized as observer service providers. NMFS believes these additional measures are inseparable from the 100-percent observer coverage requirement; therefore, NMFS had to disapprove these measures too. With the disapproval of these measures, the existing waiver and observer service provider requirements remain in effect.

2. Measures To Minimize Slippage

Amendment 5 proposed establishing slippage caps for the herring fishery. Once there have been 10 slippage events in a herring management area by vessels using a particular gear type (including midwater trawl, bottom trawl, and purse seine) and carrying an observer, vessels that subsequently slip catch in that management area, using that particular gear type and carrying an observer, would be required to immediately return to port. NMFS would track slippage events and notify the fleet once a slippage cap had been reached. Slippage events due to spiny dogfish preventing the catch from being pumped aboard the vessel would not count against the slippage caps, but slippage events due to safety concerns or mechanical failure would count against the slippage caps. The Council recommended these slippage caps to discourage the inappropriate use of the slippage exceptions, and to allow for some slippage, without being unduly burdensome on the fleet.

Throughout the development of Amendment 5 NMFS identified potential concerns with the rationale supporting, and legality of, the slippage caps. The need for, and threshold for triggering a slippage cap (10 slippage events by area and gear type) does not appear to have a strong biological or operational basis. Recent observer data (2008–2011) indicate that the estimated amount of slipped catch is relatively low compared to total catch (approximately 1.25 percent). Observer data also indicate that the number of slippage events is variable across years. During 2008–2011, the number of slippage events per year ranged between 35 and 166. The average number of slippage events by gear type during 2008, 2009, and 2011 were as follows: 4 by bottom trawl; 36 by purse seine; and 34 by midwater trawl. The data did not consistently differentiate the slippage events by area.

Under the proposed measure, once a slippage cap for a particular gear type in a herring management area has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. Vessels could continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Conversely, vessels responsible for slippage events 1 through 10, could continue fishing after the 11th slippage event, provided they do not slip catch again. NMFS believes this aspect of the proposed measure is inequitable. Additionally, this measure could have resulted in a vessel operator having to choose between trip termination and bringing catch aboard despite a safety concern. For these reasons, NMFS believes this measure is inconsistent with the MSA National Standards 2 and 10 and disapproved it.

The measures to minimize slippage are based on the sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I. However, there are important differences between these measures. Under the Closed Area I requirements, if midwater trawl vessels slip catch, they are allowed to continue fishing, but they must leave Closed Area I for the remainder of that trip. The requirement to leave Closed Area I is less punitive than the proposed requirement to return to port. Therefore, if the safety of bringing catch aboard is a concern, leaving Closed Area I and continuing to fish would likely be an easier decision for a vessel operator to make than the decision to terminate the trip and return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels under the Closed Area I requirements, inequitable application among the fleet is not an issue for the Closed Area I requirements, like NMFS believes it is for the proposed slippage caps.

If the Council wants to revise the slippage cap in a future action, the revisions would need to address issues concerning safety, the biological/administrative justification for the cap's trigger, and equity. The slippage cap could be revised to be more similar to the sampling requirements in Groundfish Closed Area I, such that all vessels that slip catch have a consequence. This revision would alleviate NMFS's concern with the equitable application of the slippage cap among those who contribute to reaching the cap, as well as its concern with the basis for triggering the cap. The consequence of slipped catch could be a requirement to leave the area where the slippage event occurred; the area could be a herring management area or a statistical area. But the consequence should not be so severe as to create a safety issue. To alleviate safety concerns, slippage for safety, mechanical, or excess spiny dogfish catch reasons could be exempt from any consequence, except that the vessel would still be required to complete a released catch affidavit.

Even though the slippage caps were disapproved, the prohibition on slippage, the released catch affidavit, and the ongoing data collection by NEFOP, and 100-percent observer coverage requirement for midwater trawl vessels fishing in groundfish closed areas still allow for improved monitoring in the herring fishery, increased information regarding discards, and an incentive to minimize the discarding of unsampled catch.

3. Reporting Requirements for Dealers

During the development of Amendment 5, some stakeholders expressed concern that herring catch is not accounted for accurately and that there needs to be a standardized method to determine catch. In an effort to address that concern, Amendment 5 proposed requiring herring dealers to accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document for each transaction how they estimate relative species composition. During the development of Amendment 5, NMFS identified potential concerns with the utility of this measure.

Dealers are currently required to accurately report the weight of fish, which is obtained by scale weights and/or volumetric estimates. Because this proposed measure did not specify how fish are to be weighed, and would still allow volumetric estimates, the measure may not have changed dealer behavior and, therefore, the requirement may not have led to any measureable change in the accuracy of catch weights reported by dealers. Further, this measure did not provide standards for estimating species composition. Without standards for estimating species composition or for measuring the accuracy of the estimation method, NMFS may have been unable to evaluate the sufficiency of the methods used to estimate species composition. For these reasons, the proposed requirement for dealers to document the methods used to estimate species composition may have not improved the accuracy of dealer reporting.

While the measure requiring dealers to document methods used to estimate species composition may not have direct utility in monitoring catch in the herring fishery, it may still inform NMFS's and the Council's understanding of the methods used by dealers to determine species weights. That information may aid in development of standardized methods for purposes of future rulemaking. Furthermore, full and accurate reporting is a permit requirement; failure to do so could render dealer permit renewals incomplete, precluding renewal of the dealer's permit. Therefore, there is incentive for dealers to make reasonable efforts to document how they estimate relative species composition, which may increase the likelihood that useful information will be obtained as a result of this requirement.

In light of the foregoing, NMFS evaluated whether the proposed measure has practical utility, as required by the MSA and the Paperwork Reduction Act (PRA), that outweighs the additional reporting and administrative burden on the dealers. In particular, NMFS considered whether and how the proposed measure would help prevent overfishing, promotes the long-term health and stability of the herring resource, monitors the fishery, facilitates inseason management, or judges performance of the management regime.

NMFS determined that this measure would not measurably improve the accuracy of dealer reporting or the management of the herring resources. NMFS also determined that this measure does not comply with National Standard 7's requirement to minimize costs and avoid unnecessary duplication, and the PRA's requirement for the utility of the measure to outweigh the additional reporting and administrative burden on the dealers. Therefore, NMFS disapproved the dealer reporting requirements. With the disapproval of this measure, the existing requirement that dealers accurately report the weight of fish is still in effect.

If the Council wants to revise dealer reporting requirements in a future action, the revisions would need to address issues concerning accuracy and utility of the information reported and could be addressed in several ways.

The Council could select Alternative 3.1.5.2 Sub-Option 2C in Amendment 5 (requiring vessel owners to review and validate data for their vessels in Fish-on-Line) and propose that measure in a future action. This measure would be a change from status quo, and it has some utility, as it helps identify, and possibly reduce, discrepancies between dealer and vessel reports. This option has an accompanying recommendation for daily vessel trip and dealer reports. Changing reporting frequency would increase the timeliness of reports and would provide data to NMFS for validation sooner than they are currently available.

Another way for the Council to revise the dealer reporting requirement would be to clarify and standardize the methods used to ''accurately weigh all fish.'' Does the measure require fish to be weighed using a scale? Does the measure require a volumetric estimate based on a certified fish hold or standardized totes? If the methods to ''accurately weigh all fish'' were specified, it would likely change dealer behavior from status quo, and may, depending on the methods, improve the accuracy of dealer reports.

Alternatively, the Council could take this opportunity to revisit the original concern that sparked the development of the dealer reporting requirement, that

landings data were not verified by a third party, and revise the measure to better address that concern. Lastly, the sub-option requiring dealers to document how they estimate the composition of catch was intended to gather information on methods used by dealers to estimate species composition. Another way to obtain that type of information would be to gather it as part of a data collection program that would update community profiles for Northeast fisheries.

Comments and Responses

NMFS received 8,163 comments during the comment period on the proposed rule. Form letters, comprising 8,008 comments, were submitted by two environmental advocacy groups (EAGs). Comments were also submitted by other EAGs, individuals involved in other fisheries (e.g., groundfish, tuna, recreational), the general public, the herring industry, and the Council. Only comments relevant to measures considered in Amendment 5 are summarized and addressed below. Comments related to other fishery management actions or general fishery management practices are not addressed here. Some commenters re-submitted comments on the DEIS for Amendment 5. Comment letters submitted on the DEIS for Amendment 5 are addressed in the Section 8.1.4 of the Amendment 5 FEIS, so neither the comment nor the response is repeated here.

1. General Comments

Comment 1: Many commenters urged NMFS to approve Amendment 5 in its entirety, but provided no specific comments on the proposed measures. Additional commenters acknowledged that the amendment contains many important components, but they believe the slippage cap and 100-percent observer coverage requirement are the two measures that are critical to managing the herring fishery. One commenter does not believe that any of the concerns voiced by NMFS regarding the 100-percent observer coverage requirement and the slippage cap are valid because the Council designed these measures with safety and fairness in mind. Many commenters believe it is essential that NMFS approve and implement Amendment 5 because the herring resource, a cornerstone of the Northeast ecosystem, is too important to manage inadequately.

Response: NMFS agrees with the commenters that herring is critical to the health of the Northeast ecosystem and that it must have careful and effective management. NMFS also supports improvements to fishery dependent data collections by expanding, to the extent practicable, at-sea monitoring of the herring fishery and reducing bycatch and unnecessary discarding. While the Council may have designed the 100-percent observer coverage requirement and slippage cap measure to consider safety and fairness, as described previously, NMFS believes the resulting 100-percent observer requirement and slippage caps proposed in Amendment 5 are inconsistent with the MSA and other applicable law. Therefore, regardless of NMFS's desire to increase monitoring and reduce bycatch in the herring fishery, it cannot approve and implement measures it believes inconsistent with applicable law.

NMFS agrees with the commenter that herring is an important marine resource in the Northeast and that Amendment 5 has many of the tools to improve management of the herring fishery, but disagrees that the amendment has no utility without the 100-percent observer coverage requirement and slippage caps. Amendment 5 implements many measures that improve monitoring and bycatch minimization in the herring fishery, including adjustments to the fishery management program and at-sea monitoring, such as prohibiting slippage; and measures to address river herring interactions and midwater trawl access to groundfish closed areas.

Comment 2: Two EAGs expressed their concern that, in the proposed rule, NMFS explained that it may not be able to approve several critical elements of Amendment 5. The commenters believe that NMFS fails to recognize the substantial need for these measures, their central role in the overall Amendment 5 reform package, and their strong justification in the FEIS. A number of other commenters raised similar sentiments focusing on their belief that these measures strike a carefully designed balance between conservation and industry needs, are consistent with the MSA and other applicable law, and should be approved in full.

Response: NMFS expressed concern with the 100-percent observer coverage requirement, the slippage caps, and the dealer reporting requirements throughout the development of this amendment. But these measures have strong support from many stakeholders, and they were not modified in such a way as to alleviate NMFS's concerns. The proposed rule for Amendment 5 described potential concerns about these measures' consistency with the MSA and other applicable law. No new or additional information was identified by commenters during the public comment period on the NOA for Amendment 5 to address NMFS's concerns with the identified deficiencies of these measures. Therefore, on July 18, 2013, NMFS determined these three measures must be disapproved.

On September 20, 2013, NMFS sent a letter to the Council with recommendations on how these measures could be revised to address these measures' identified deficiencies. If the Council chooses to revise these measures, NMFS will work with the Council to design effective measures that help improve management of the herring fishery. Revised measures could be addressed in upcoming Council actions. Whether that action would be an amendment or framework will depend on the scope of the revised measure.

The measures in Amendment 5 that were approved by NMFS are consistent with the MSA and other applicable law, and analysis in the FEIS indicates these measures will improve data quality as well as bycatch avoidance and minimization.

Comment 3: Several EAGs commented that NMFS undermined the public's opportunity to effectively comment on Amendment 5 measures prior to NMFS's decision to approve, disapprove, or partially approve Amendment 5. The commenters stated that because the preamble of the proposed rule outlined NMFS's serious concerns about the approvability of several Amendment 5 measures and requested public comment, all comments received through the proposed rule's comment period deadline (July 18, 2013) should be considered in Amendment 5's approval decision.

Response: The NOA for Amendment 5 published on April 22, 2013; the notice for its accompanying FEIS published on April 26, 2013; and the Amendment 5 proposed rule published on June 3, 2013. The comment periods for the NOA and proposed rule overlapped for 19 days. NMFS must approve/disapprove an amendment by 30 days after the close of the comment period on the NOA. That decision date for Amendment 5 was July 19, 2013. Therefore, it would not have been possible to consider all public comments received through July 18, 2013, in the decision to approve/disapprove Amendment 5.

NMFS received over 100 comments during the NOA comment period. While most of those comments expressed strong support for the full approval of Amendment 5, they did not offer solutions to NMFS's identified

deficiencies in Amendment 5 measures. Additionally, while not explicitly considered in the decision to partially approve Amendment 5, NMFS reviewed and considered all comments received during the proposed rule comment period prior to publishing this final rule. However, no new or additional information was identified by commenters during the public comment period on the proposed rule to address NMFS's concerns with the disapproved measures.

Additionally, NMFS's approvability concerns with the three measures disapproved in Amendment 5 should have been no surprise to interested stakeholders. NMFS's concerns with these measures had been discussed throughout the development of Amendment 5, and were clearly articulated in a comment letter to the Council (dated June 5, 2012) prior to the Council taking final action on Amendment 5 in June 2012.

Comment 4: One EAG believes that Amendment 5 segments decision making and fails to: (1) Consider whether river herring and shad should be stocks in the Herring FMP, (2) minimize river herring and shad bycatch to the extent practicable, and (3) consider a range of alternatives for an acceptable biological catch (ABC) control rule for herring.

Response: Amendment 5 is not required to consider all aspects of management of the herring fishery; instead the amendment is focused on considering measures to improve monitoring and address bycatch. Considering whether river herring and shad should be stocks in the Herring FMP or considering a range of alternatives for an ABC control rule for herring are outside the scope of Amendment 5.

Amendment 5 implements the following measures to address bycatch in the herring fishery: (1) Prohibiting slippage, with exceptions for safety concerns, mechanical failure, and spiny dogfish preventing catch from being pumped aboard the vessel, and requiring a released catch affidavit to be completed for each slippage event; (2) expanding at-sea sampling requirements for all midwater trawl vessels fishing in groundfish closed areas; (3) establishing a new open access permit to reduce the potential for the regulatory discarding of herring in the mackerel fishery; (4) establishing the ability to consider a river herring catch cap in a future framework; (5) establishing River Herring Monitoring/Avoidance Areas; (6) evaluating the ongoing bycatch avoidance program investigation of providing real-time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas; and (7) expanding and adding reporting and sampling requirements designed to improve data collection methods, data sources, and applications of data to better determine the amount, type, disposition of bycatch.

The Herring FMP, and related bycatch measures in the Northeast Multispecies FMP, comply with National Standard 9's requirement to minimize bycatch and bycatch mortality to the extent practicable. Amendment 5 implements many measures designed to provide incentives for incidental catch and bycatch avoidance and gather more information that may provide a basis for future bycatch avoidance or bycatch mortality reduction measures. These measures are supported by sufficient analysis and consideration of the best available scientific information and the MSA National Standards, and represent the most practicable bycatch measures based on the information available at this time.

In November 2012, the Council voted to consider whether river herring and shad should be stocks in the herring fishery in an amendment during 2013. The Council did not have the time to consider whether river herring and shad should be stocks in the Herring FMP during 2013; therefore, the Council made this consideration a Herring FMP priority for 2014.

The Council considered an ABC control rule for herring as part of the 2013–2015 Herring Specifications/Framework 2 to the Herring FMP. The Council determined, based on recommendations from its Scientific and Statistical Committee (SSC), that the constant catch ABC control rule adequately accounts for Atlantic herring's role as forage, as it allows for sufficient Atlantic herring biomass through 2015 to support ecosystem considerations, including Atlantic herring's forage role in the ecosystem, and yields short-term biomass projections for 2013–2015 that are very similar to other forage fish control rules (e.g., Lenfest Forage Fish Report control rule; Pacific Fishery Management Council's control rule for coastal pelagic species). The June 2012 herring stock assessment made a significant advance in accounting for herring's role as a forage species by revising natural mortality rate and the constant catch ABC control rule was developed from catch projections in that assessment. The SSC recommended that considerably more analysis would be necessary before it could support applying forage fish control rules like the Lenfest and Pacific Council approaches to herring in the future, including evaluating predator-prey models, the relationship between maximum sustainable yield and changing natural mortality rates due to changes in consumption, and unintended consequences of treating forage species differently than other managed species. Based on the SSC's recommendations, the Council discussed that control rules for forage species, such as the Lenfest and Pacific Council control rules, should receive further evaluation prior to any potential implementation as a long-term strategy for managing herring, and should be evaluated in a future amendment to the Atlantic Herring FMP. NMFS concurs with the Council's conclusions on the constant catch ABC control rule and further consideration on forage-based control rules for Atlantic herring, as described in NMFS's August 29, 2013, letter to the Council, including the implications of forage-based control rules on other components of the ecosystem and on the biological reference points for Atlantic herring. The effective date of the 2013–2015 Atlantic Herring Specifications/Framework 2 was September 30, 2013, and NMFS published the final rule on October 4, 2013, (78 FR 61828).

Comment 5: One EAG believes that Amendment 5 was unlawfully delayed because the NOAs for the amendment and its FEIS were not published until April 2013, despite Amendment 5 being completed by the Council and submitted to NMFS on December 21, 2012.

Response: The Council adopted Amendment 5 on June 20, 2012, and submitted Amendment 5 to NMFS for initial review on September 10, 2012. NMFS reviewed the amendment for consistency with NEPA requirements and identified deficiencies in the NEPA analysis that needed to be addressed. Following a series of revisions, the Council submitted Amendment 5 to NMFS on March 25, 2013. Following the March submission, NMFS determined that the NEPA analysis for Amendment 5 met the necessary requirements and transmitted Amendment 5 to the Secretary on April 16, 2013. An NOA for the FEIS was prepared for Amendment 5 and published on April 26, 2013, with a comment period ending May 28, 2013, and an NOA for the amendment published on April 22, 2013, with a comment period ending June 21, 2013.

2. Comments on Adjustments to the Fishery Management Program

Comment 6: One commenter opposes transfers-at-sea because they believe that all fish should be counted at the dock before they are transferred.

Response: During the early development of Amendment 5, NMFS identified transfers-at-sea as one potential issue to address when developing a more comprehensive catch monitoring program for the herring fishery. Herring is transferred at sea between harvesting vessels and vessels purchasing herring for personal use as bait, herring carriers, and other permitted herring vessels for transport. The Council's Herring Plan Development Team (PDT) reviewed herring transfer-at-sea data and found that issues related to reporting and monitoring of transfers-at-sea had largely been clarified in recent years through explicit reporting guidance from NMFS. Additionally, data in Table 127 in Section 6.1.2.2.5 of the Amendment 5 FEIS support the conclusion that the amount of herring transferred at sea is minimal and represents a very small fraction of the herring fishery. Given the improved monitoring of transfers-at-sea, his action allows for status quo transfer-at-sea activities to continue in the herring fishery because any additional reporting burden would outweigh the potential benefit of limiting transfers-at-sea.

Comment 7: Commenters urged NMFS to approve the requirement that herring dealers accurately weigh all fish, because accurate landings data will ensure catch accountability, including catch estimates for river herring and shad, for the herring fishery and it has strong support from stakeholders. Commenters disagree with NMFS's language in the proposed rule that describe this measure is essentially status quo. They believe this measure is intended to end the practice of dealers reporting visual estimates of catch weight in favor of verifiable methods such as scales or volumetric estimates of fish holds. Additionally, commenters encouraged NMFS to include effective regulations implementing this measure in the final rule for Amendment 5, especially prohibiting visual volumetric estimates of catch weight and specifying third-party verification of landings.

Response: Section 6.1.4.1 of the Amendment 5 FEIS provides examples of how dealers would comply with the requirement to ''accurately weigh all fish.'' It describes dealers weighing fish on scales, obtaining volumetric estimates from certified fish holds, and using a volumetric estimate of a box or container of fish to serve as the weight of any box of fish of a similar size. All of these practices are currently used by dealers. Because the FEIS describes using a volumetric estimate of a container of fish to generate the weight of any container of a similar size, NMFS believes that the amendment would have continued to allow, rather than end, the practice of visual estimates of catch weight. In analyzing the effectiveness of using a volumetric estimate of a container of fish to generate the weight of any container of a similar size, the FEIS concludes that this example would result in very little, if any, change in dealer behavior and that estimates may, therefore, not be an improvement over status quo.

The MSA only allows NMFS to approve or disapprove a measure in an amendment; it does not allow NMFS to substantially modify a measure. NMFS would have had to substantially modify the proposed requirement for dealers to ''accurately weigh all fish'' in order to prohibit visual volumetric estimates of catch weight or to require third-party verification of landings. Dealers are currently required to accurately report the weight of fish. Lacking the ability to modify the proposed dealer weigh requirement, NMFS disapproved the proposed requirement because it would not likely have changed dealer behavior and would not likely have improved the accuracy of weights reported by dealers.

Comment 8: Some commenters believe that requiring dealers to document their methods for estimating catch composition, as proposed in Amendment 5, would ensure that mixed-species catches are more accurately weighed by dealers, thus aiding in the monitoring of depleted species such as river herring and certain groundfish species.

Response: NMFS disagrees that requiring dealers to document their methods for estimating catch composition would ensure that mixed-species catch are more accurately weighed by dealers. As described previously, the proposed measure that dealers ''accurately weigh all fish'' did not require dealers to weigh fish on a scale. Additionally, the requirement to document how the composition of a mixed catch is estimated would not require the use of any particular method to estimate species composition. In the absence of a requirement to change estimation methods, dealers would be unlikely to change their estimation methods from current practices; therefore, it is unlikely that that this measure would have improved the accuracy of weights reported by dealers.

Comment 9: One commenter supports the requirement that dealers accurately weigh all fish and sort catch by species. The commenter believes that the mechanical weighing of fish, not relying on volumetric estimates, is the most accurate way to monitor catch in the herring fishery. The commenter also believes these proposed dealer reporting requirements would aid in accurate catch reporting, help prevent overfishing, and promote long-term health of the herring resource by ensuring that catch stays within catch limits.

Response: NMFS agrees that the mechanical weighing of fish, rather than relying on volumetric estimates, is often the most accurate method to determine weight. However, Amendment 5 would not have required the mechanical weighing of fish, nor would it have required dealers to sort catch by species. Therefore, the proposed measure would not have improved the accuracy of catch reporting, help prevent overfishing, or promote the long-term health of the herring resource by ensuring catch stays within catch limits any more that the current requirement that dealers accurately report the weight of fish.

Comment 10: Several EAGs stated that the Amendment 5 FEIS does not contain sufficient justification to indicate that a new open access herring permit with a 20,000-lb (9-mt) herring possession limit for limited access mackerel vessels fishing in Areas 2 and 3 is needed. They believe that this new permit would result in new, poorly understood effort in the mackerel fishery outside the scope of the new monitoring program and would increase directed herring fishing during times and areas where river herring and shad incidental catch is of great concern. Additionally, they do not believe this measure would help satisfy National Standard 9 requirements.

Response: NMFS believes the FEIS provides sufficient justification for establishing the new Areas 2/3 Open Access Herring Permit. Section 6.1.5 of the FEIS describes the significant overlap between the mackerel and herring fisheries. Mackerel and herring co-occur, particularly during January through April, which is a time that vessels often participate in both fisheries. Not all vessels participating in the mackerel fishery qualify for a limited access herring permit because they either did not have adequate herring landings or they are new participants in the mackerel fishery.

Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the

open access permit's 6,600-lb (3-mt) possession limit. The FEIS suggests that herring discards in the mackerel fishery are currently low, and states that the extent to which discarding may be minimized by increasing the possession limit to 20,000 lb (9 mt) is unclear. However, VTR data may not be well suited to reflect a discard problem at this time, and may not fully characterize the potential for this problem to exist in the future. Additionally, the industry has stated that it has not been fishing for mackerel as much in recent years because mackerel are less available to the fishery now as they may have shifted to offshore areas, and because of concerns about encountering herring in quantities larger than the current open access herring permit possession limit.

Therefore, the creation of the new Areas 2/3 Open Access Herring Permit is intended to minimize the potential for regulatory discarding of herring by limited access mackerel vessels that did not qualify for a limited access herring permit, especially if effort in the mackerel fishery should approach historical levels. This is consistent with National Standard 9's requirement to minimize bycatch to the extent practicable. All herring catch and discards are tracked against herring ACL/sub-ACLs, so the biological impact of the new permit on herring is expected to be neutral.

Ongoing observer coverage in the herring fishery, in combination with the measures in Amendment 5 prohibiting slippage, should improve observer data on bycatch and incidental catch in the herring fishery. Further, possession limits can be modified through a framework adjustment or the specifications process. If the catch of river herring and shad is determined to be too high, the 20,000-lb (9-mt) possession limit could be modified in a future action.

Comment 11: A few commenters support approval of the following measures: (1) Revising regulatory definitions of transfer at-sea and offload, particularly to lessen the likelihood of double counting catch; (2) revising operating provisions for herring carriers (i.e., At-Sea Dealer Permit, exempting herring carriers from VTR requirements) to minimize data mismatches between dealer and vessel reports and lessen the likelihood of double counting catch; (3) providing herring carriers with flexibility in the 7-day enrollment period associated with the herring carrier LOA by also allowing carriers to declare trips via VMS; (4) establishing an Areas 2/3 Open Access Permit (Category E) to limit the potential for regulatory discards of herring during mackerel fishing; (5) modifying the existing 72-hr trip notification requirement to a 48-hr notification requirement; (6) prohibiting vessels from turning off their VMS when in port; and (7) requiring vessels working cooperatively to be subject to the most restrictive possession limit.

Response: NMFS concurs with the commenters. These measures were approved, and this action implements them, because NMFS believes these measures will help improve monitoring and address bycatch in the herring fishery, improve overall management of the herring fishery, and are consistent with the MSA and other applicable law.

Comment 12: One commenter questioned why vessels issued the new Areas 2/3 Open Access Permit (Category E) would be subject to the same notification requirements as limited access vessels, but not limited access catch monitoring requirements.

Response: Amendment 5 states that Category E permits would be subject to the same notification and reporting requirements as Category C (Incidental Catch Limited Access Herring Permit) vessels. Therefore, this action establishes notification and reporting requirements for the Category E permit that are consistent with the requirements for Category C vessels, including the requirement to possess and maintain a VMS, VMS activity declaration and pre-landing requirements, and catch reporting requirements (i.e., submission of daily VMS catch reports and weekly VTRs).

Amendment 5 does not state that Category E permits would be subject to the same catch monitoring requirements as Category C vessels, including the proposed vessel requirements to help improve at-sea sampling and measures to minimize the discarding of catch before it has been made available to observers for sampling. When describing or analyzing catch monitoring requirements, Amendment 5 does not describe extending catch monitoring requirements for Category C vessels to Category E vessels, nor does it analyze the impacts of catch monitoring requirements on Category E vessels. Because the Category C catch monitoring requirements were not discussed or analyzed in relation to Category E vessels, this action does not extend those catch monitoring requirements to Category E vessels.

Comment 13: One commenter was concerned that herring midwater trawl and purse seine vessels would still be subject to the more restrictive groundfish requirement that vessels contact NMFS 72-hr in advance of fishing trip to request an observer, rather than the less restrictive 48-hr trip notification requirement in Amendment 5. To minimize the potential for confusion, one commenter encourages NMFS to work with the Council to change the 72-hr groundfish requirement to be consistent with the 48-hr herring requirement.

Response: NMFS agrees that differences in the pre-trip observer notification requirement may cause the herring industry confusion, and NMFS will work with the Council toward standardizing the 72-hr requirement to a 48-hr requirement in an upcoming groundfish action.

3. Comments on Adjustments to At-Sea Monitoring

Comment 14: Several commenters urged NMFS to approve critical measures in Amendment 5 designed to better monitor catch and bycatch in the herring fishery, including the 100-percent coverage requirement. They explain that the Council approved the 100-percent observer coverage requirement on Category A and B vessels with widespread public support from commercial and recreational fishermen, eco-tourism and coastal businesses, river herring and coastal watershed advocates, and other members of the public. They believe that 100-percent observer coverage is justified, given the fleet's harvesting capacity and its demonstrated bycatch, and makes it possible to document rare bycatch events. Additionally, they believe the 100-percent coverage measure is consistent with the MSA and other applicable law, and necessary to meet requirements to end overfishing, minimize bycatch, and ensure accountability.

Response: NMFS supports increasing observer coverage to the extent practicable to better monitor catch and bycatch in the herring fishery. Throughout the development of Amendment 5, NMFS advised the Council that Amendment 5 must identify a funding source for increased observer coverage because NMFS's annual appropriations for observer coverage are not guaranteed. Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery. Requiring NMFS to pay for 100-percent observer coverage would amount to an unfunded mandate. Because Amendment 5 does not identify a funding source to cover the costs of increased observer coverage, the measure is not sufficiently developed to approve at this time. Therefore, NMFS had to disapprove the 100-percent observer coverage requirement.

With the disapproval of the 100-percent observer coverage requirement measure, the existing SBRM observer coverage levels and Federal observer funding for the herring fishery remain in effect. The approved at-sea sampling measures and other bycatch minimizing measures in Amendment 5 reduce bycatch to the extent practicable. Current observer coverage includes SBRM coverage levels that used to monitor bycatch. In addition to SBRM coverage, Amendment 5 provides for full accounting of catch in groundfish closed areas, aimed at determining the accuracy of claims of recreational fishermen and environmental groups of high incidence of unreported groundfish bycatch. Given the increased level of coverage in groundfish closed areas and data indicating that herring vessels have low bycatch incidence, NMFS's disapproval of the 100-percent observer coverage measure did not appreciably reduce the Herring FMP's ability to minimize bycatch.

The MSA National Standards also require the Councils and NMFS to consider costs and efficient use of resources to the extent practicable. The 100-percent observer coverage requirement was accompanied by a cost-sharing measure that attempted to mitigate the impact of the relatively high cost of 100-percent observer coverage on the industry. However, the Council's recommendation for NMFS and the industry to share the observer monitoring costs was not sufficiently developed to avoid conflicting with the Antideficiency Act. Consequently, maintaining the existing SBRM coverage rates that have been determined to be sufficient for vessels fishing for herring outside of groundfish closed areas, combined with increasing coverage for vessels fishing for herring inside groundfish closed areas, plus other measures such as improved sampling and administrative measures are the most practicable observer coverage measures for the fishery at this time. In total, the new measures approved as part of Amendment 5 meet the MSA requirements to end overfishing, minimize bycatch to the extent practicable, and ensure catch accountability.

Recognizing funding challenges, Amendment 5 specified status quo observer coverage levels and funding for up to 1 yr following the implementation of Amendment 5, with the 100-percent observer coverage and partial industry funding requirement to become effective 1 yr after the implementation of Amendment 5. During that year, the Council and NMFS, in cooperation with the industry, would attempt to develop a way to fund 100-percent observer coverage.

During 2013, staff from NMFS and the New England and Mid-Atlantic Councils formed a working group to identify a workable, legal mechanism to allow for industry-funded observer coverage in the herring and mackerel fisheries. To further explore the legal and logistical issues surrounding industry-funded observer coverage, NMFS formed a working group of Northeast Regional Office, NEFSC, General Counsel Northeast, and NMFS Headquarters staff. The NMFS working group identified an administrative mechanism to allow for industry funding of observer monitoring costs in Northeast Region fisheries, as well as a potential way to help offset funding costs that would be borne by the industry, subject to available funding. This administrative mechanism would be an option to fund observer coverage targets that are higher than SBRM coverage levels and would likely include a prioritization process to allocate available funding across fisheries. The mechanism to allow for industry-funded observer coverage is a potential tool for all Northeast Region FMPs, but would need to be added to each FMP through an omnibus amendment to make it an available tool, should the Council want to use it. Additionally, this omnibus amendment could establish observer coverage targets for Category A and B herring vessels.

In a September 20, 2013, letter to the Council, NMFS offered to be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in New England and Mid-Atlantic FMPs. At its September 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. At this time, NMFS expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Comment 15: Several commenters claim: (1) The Council did identify a funding source for the 100-percent observer coverage requirement; (2) the Council's recommendation that the industry pay a maximum target of $325 per day towards observer costs was only a target value; and (3) the Council intended that the industry should pay whatever costs are necessary to ensure 100-percent observer coverage.

Response: The amendment states that the preferred funding option for the 100-percent observer coverage requirement is a target maximum industry contribution of $325 per sea day. NMFS does not believe this description indicates that the industry would be responsible for paying whatever cost is necessary to fund 100-percent observer coverage, but rather would target industry costs around $325.

There are two types of costs associated with observer coverage: (1) Observer monitoring costs, such as observer salary and travel costs; and (2) NMFS support and infrastructure costs, such as observer training and data processing. Monitoring costs can either be paid by industry or paid by NMFS, but they cannot legally be shared; NMFS support and infrastructure costs can only be paid by NMFS. The monitoring costs associated with an observer in the herring fishery are higher than $325 per day. The FEIS for Amendment 5 analyzes an alternative with the industry paying $325 per day toward observer monitoring costs and paying $1,200 per day (estimated sum of observer monitoring costs and NMFS support and infrastructure costs), but it does not analyze a range of that would approximate total monitoring costs.

The amendment neither describes nor analyzes an option where the industry is responsible for paying all observer monitoring costs. Therefore, Amendment 5 does not identify a funding source to cover the costs of increased observer coverage, and the industry-funded observer requirement is not sufficiently developed to approve in Amendment 5.

Comment 16: EAGs disagree with NMFS's statement in the proposed rule that there is no legal mechanism to allow timely implementation of the Council's preferred funding options, and point to successful precedents set on the West Coast for cost-sharing between NMFS and the industry.

Response: In Amendment 5, the 100-percent observer requirement is coupled with a target maximum industry contribution of $325 per day. The monitoring costs associated with an observer in the herring fishery are higher than $325 per day. The Department of Commerce Office of General Counsel has advised that cost-sharing of observer monitoring costs between NMFS and the industry would violate the Anti-Deficiency Act. NMFS may pay all the observer monitoring costs (e.g., NEFOP observers) or the industry may pay all the observer monitoring costs (e.g., Atlantic scallop fishery), but NMFS and the industry cannot both pay towards observer monitoring costs. Therefore, there is no current legal mechanism to allow cost-sharing of monitoring costs between NMFS and the industry.

In the Pacific Groundfish Trawl Program, the industry is required to pay all observer monitoring costs. However, as a way to transition the industry to paying all observer monitoring costs, NMFS is reimbursing the observer service providers a percentage of the observer monitoring costs through a grant with the Pacific States Marine Fisheries Commission. The level of reimbursement is contingent on available NMFS funding and is expected to decrease over time, such that, eventually, the industry will be paying all observer monitoring costs. Subject to NMFS funding, this grant mechanism may also be a temporary option to reimburse the herring industry for observer monitoring costs. But this funding mechanism is very different than the measure proposed in Amendment 5, and NMFS cannot modify the proposed measure to make it consistent with the Anti-deficiency Act.

As described previously, NMFS has offered to be the technical lead on an omnibus amendment to establish the administrative mechanism to allow for industry-funded observer coverage in the New England and Mid-Atlantic FMPs. At its September 2013 meeting, the Council considered NMFS's offer and encouraged NMFS to begin development of the omnibus amendment. NMFS expects to present a preliminary range of alternatives for the omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Comment 17: Several commenters expressed concern that waivers are not a viable alternative to 100-percent observer coverage and must not be allowed to undermine monitoring of the herring fleet. They also felt that NMFS must clarify the two-year review process for the 100-percent observer coverage requirement to ensure coverage lapses do not occur and that 100-percent observer coverage requires both vessels in a pair trawl operation to carry an observer. Additionally, commenters suggested NMFS should disapprove the ''grandfathering'' of states as observer service providers and explicitly require that state service providers meet NEFOP standards and protocols, including procedures for data sharing and transparency.

Response: NMFS determined that the proposed measures for waivers, the process to review the 100-percent observer coverage requirement, and the measure authorizing states as observer service providers were inseparable from the 100-percent observer coverage requirement. Therefore, NMFS disapproved these proposed measures along with the 100-percent observer coverage requirement. The Council will likely revisit these issues when it reconsiders industry-funded observer coverage in the omnibus amendment.

Comment 18: One commenter supports the disapproval of the 100-percent observer coverage requirement for the herring fishery because observer coverage in the herring fishery is already scientifically determined by the SBRM and the costs associated with 100-percent observer coverage far outweigh the benefits associated with additional data.

Response: NMFS agrees that observer coverage in the herring fishery is currently determined by the SBRM and is sufficient for monitoring catch and bycatch in the herring fishery. Increasing observer coverage in the herring fishery, through a future action, would provide additional data. When the Council reconsiders increasing observer coverage in the herring fishery, it will evaluate how the benefits of the additional data compare to the economic impacts.

Comment 19: One commenter supports the proposed 100-percent observer coverage requirement for the herring fishery, as well as limiting the industry contribution to $325 per day. However, since Amendment 5 is not sufficiently developed to establish an industry-funded observer program, the commenter supports NMFS's recommendation to continue the development of an industry-funded observer program in a future action. Additionally, the commenter believes that measures associated with the 100-percent observer requirement, such as waivers and observer service provider requirements, are inseparable from the 100-percent observer coverage requirement and should not be approved at this time.

Response: NMFS acknowledges the commenter's support for developing an industry-funded observer program in a future action and, as previously described, expects to present a preliminary range of alternatives for the industry-funded observer coverage omnibus amendment to the New England and Mid-Atlantic Councils in early 2014.

Comment 20: Several commenters disagree with language in the proposed rule justifying the disapproval of the 100-percent observer coverage requirement and slippage caps because Amendment 5 would expand at-sea monitoring requirements in the groundfish closed areas. Commenters believe that groundfish closed areas do warrant greater protection, but robust monitoring of the herring fishery across the fishery is critical as well.

Response: NMFS expressed concern in the proposed rule regarding the legality of the 100-percent observer coverage requirement and slippage caps, but also explained that those two measures were not the only proposed measures in Amendment 5 that would improve monitoring and reduce discarding in the herring fishery.

Analyses in the Amendment 5 FEIS suggest that midwater trawl vessels are not catching significant amounts of groundfish either inside or outside the groundfish closed areas. Additionally, the majority of groundfish catch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap for the herring fishery. However, the Council believes it is important to determine the extent and nature of bycatch in the herring fishery. NMFS approved the 100-percent observer coverage and increased sampling requirements for midwater trawl vessels fishing in groundfish closed areas because it is a way to incrementally increase observer coverage in the herring fishery and increase opportunities for improved sampling of herring catch.

NMFS disapproved the 100-percent observer coverage requirement and slippage caps for the herring fishery because NMFS believes those measures are inconsistent with the MSA and other applicable law. However, despite those disapprovals, the approved measures in Amendment 5, such as the prohibition on slippage and the released catch affidavit requirement, and increased sampling requirements for midwater trawl vessels fishing in groundfish closed areas, as well as the ongoing data collection by NEFOP, still provide for improved monitoring in the herring fishery, increased information regarding discards, and an incentive to minimize the discarding of unsampled catch.

Comment 21: One EAG commented that Amendment 5 fails to consider cumulative impacts of ongoing Federal actions, including a future amendment to the Herring FMP to consider listing river herring and shad as stocks in the fishery, Framework 48 to the Northeast Multispecies FMP, and the Omnibus Essential Fish Habitat (EFH) Amendment.

Response: NMFS disagrees with the comment that Amendment 5 failed to consider cumulative impacts of ongoing Federal actions. Section 6.6.4 of the FEIS describes the impacts of cumulative effects. That section describes the future amendment to the Herring FMP to consider listing river herring and shad as stocks in the fishery and the Omnibus EFH Amendment and

discusses their potential under reasonably foreseeable future actions. Because those actions are still being developed, it is not possible to definitively analyze the impacts of those actions until the range of alternatives for those amendments has been finalized. Frameworks 48 and 50 to the Multispecies FMP revised management of the groundfish fishery. While groundfish regulations may affect the herring fishery, not including Frameworks 48 (revised groundfish sector management) or 50 (revised groundfish harvest specifications) in the cumulative effects section of the FEIS does not invalidate the entire cumulative effects analysis, because those actions have minimal impact on management of the herring fishery. Framework 48 revised the possible list of exemptions for groundfish sectors, including access to groundfish closed areas, but a future action would be required to consider allowing sectors access to groundfish closed areas. Additionally, Framework 50 reduced the amounts of the haddock catch caps for the herring fishery, but that reduction is not expected to significantly affect the herring fishery because it is minimal.

Comment 22: One EAG commented that Amendment 5 fails to analyze the impacts of an industry-funded observer program.

Response: NMFS disagrees with the commenter's assertion that Amendment 5 failed to analyze the impacts of an industry-funded observer program. Section 6.2 of the FEIS analyzes the impacts of an industry-funded observer program on herring, non-target species and other fisheries, the physical environment and EFH, and fishery-related businesses and communities. This analysis focuses on the biological impacts of a range of observer coverage levels, the economic impacts of the industry paying a range of costs, and the biological and economic impacts of observer service provider requirements.

Comment 23: Several commenters urged NMFS to approve measures prohibiting slippage, requiring a released catch affidavit, and slippage caps to improve catch monitoring and reduce wasteful discarding. They believe slippage caps, and the subsequent trip termination provisions, are critical to the effectiveness of catch monitoring and bycatch estimation in the herring fishery; are consistent with the MSA and other applicable law; and are necessary to meet requirements to end overfishing, minimize bycatch, and ensure accountability. They believe the proposed caps on the number of slippage events (i.e., 10 per gear type and herring management area) are a carefully designed expansion of the regulations in place for Closed Area I or the requirement to stop fishing in an area when the sub-ACL has been harvested, and that the cap amounts are based on existing data and set at levels high enough to allow the fleet to avoid trip termination, while preventing unlimited slippage. Additionally, several commenters believe the trip termination requirement that is in effect once a slippage cap had been achieved is reasonable, safe, and fair because vessels should return to port when experiencing mechanical difficulties or have overloaded vessels.

Response: NMFS approved measures prohibiting slippage and requiring a released catch affidavit for slippage events. NMFS expects that prohibiting slippage will help reduce slippage events in the herring fishery; thus, improving the quality of observer catch data, especially data on bycatch species encountered in the herring fishery. NMFS also expects the released catch affidavit to help provide insight into when and why slippage occurs. Additionally, NMFS expects that the slippage prohibition will help minimize bycatch, and bycatch mortality, to the extent practicable in the herring fishery.

NMFS disapproved the proposed slippage caps, and the associated trip termination requirement, because of concerns with the legality of the slippage cap. Once a slippage cap has been met, vessels that slip catch, even if the reason for slipping was safety or mechanical failure, would be required to return to port. Vessels may continue fishing following slippage events 1 through 10 but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Conversely, vessels responsible for slippage events 1 through 10, may continue fishing after the 11th slippage event provided they do not slip catch again. NMFS believes this aspect of the measure is inequitable. Additionally, this measure may result in a vessel operator having to choose between trip termination and bringing catch aboard, despite a safety concern. For these reasons, NMFS believes this measure is inconsistent with the MSA National Standards 2 and 10 and disapproved it.

The measures to minimize slippage are based on the sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I. However, there are important differences between these measures. Under the Closed Area I requirements, if midwater trawl vessels slip catch, they are allowed to continue fishing, but they must leave Closed Area I for the remainder of that trip. The requirement to leave Closed Area I is less punitive than the proposed requirement to return to port. Therefore, if the safety of bringing catch aboard is a concern, leaving Closed Area I and continuing to fish would likely be an easier decision for a vessel operator to make than the decision to terminate the trip and return to port. Additionally, because the consequences of slipping catch apply uniformly to all vessels that slip catch under the Closed Area I requirements, or when a closure becomes effective in an area where the ACL has been harvested, inequity among the fleet is not an issue for the Closed Area I requirements or closure measures, like NMFS believes it is for the proposed slippage caps.

Even though NMFS disapproved the slippage caps, the prohibition on slippage, the released catch affidavit, the ongoing data collection by NEFOP, and 100-percent observer coverage requirement for midwater trawl vessels fishing in groundfish closed areas still allow for improved monitoring in the herring fishery, increased information regarding discards, and an incentive to minimize discards of unsampled catch.

Comment 24: NMFS received numerous comments from EAGs that the analysis in the FEIS provides a reasonable basis for capping slippage events at 10 slippage events by gear (midwater trawl, bottom trawl, purse seine) and by herring management area. A number of commenters also disagreed with NMFS's statements in the proposed rule that the slippage caps may be punitive, unfair, unsafe, or not operationally feasible.

Response: The Amendment 5 FEIS documents that the frequency of slippage in the herring fishery is highly variable. During 2008–2011, the number of slippage events per year ranged between 35 and 166. The annual average number of slippage events by gear type during 2008, 2009, and 2011 were as follows: 4 by bottom trawl, 36 by purse seine, and 34 by midwater trawl. Because the frequency of slippage was not consistently analyzed in the FEIS by gear type and management area, NMFS believes it difficult to use the analysis in the FEIS to select a value for slippage caps by gear type and management area. For example, based on the available data for past years, the proposed slippage cap would not have affected bottom trawl vessels. On the other hand, it might have affected vessels using purse seine and midwater gear if slippage events were concentrated in one or two management areas. For these reasons, NMFS believes the FEIS does not provide a strong operational basis for

the slippage cap trigger (i.e., 10 slippage events by gear type and area).

Throughout the development of Amendment 5, NMFS identified potential concerns with the rationale supporting, and legality of, the slippage caps. NMFS highlighted its concerns with these aspects of the slippage cap in the proposed rule. As described in the response to the previous comment, NMFS believes the inequitable nature of the slippage cap, the potential for vessel operators having to choose between trip termination and bringing catch aboard despite a safety concern, and the potential for inequity among the fleet as a result of the slippage caps, render the proposed slippage caps inconsistent with the MSA and other applicable law. For these reasons, NMFS disapproved the proposed slippage caps.

Comment 25: One commenter supports the approval of the slippage prohibition and the requirement that a released catch affidavit be completed if catch is slipped, but they do not support approval of the slippage caps. The commenter does not recognize any biological need for a slippage cap, and believes the caps would result in a vessels operator being forced to choose between trip termination and bringing catch aboard, despite a safety concern, which is inconsistent with National Standard 10.

Response: NMFS acknowledges the commenter's support for approval of the slippage prohibition and the released catch affidavit requirement. NMFS agrees that making the vessel operator choose between trip termination and bringing catch aboard despite a safety concern is inconsistent with National Standard 10, and that the analysis in the Amendment 5 FEIS does not provide compelling evidence for the need for or trigger for slippage caps.

Comment 26: Two commenters believe the proposed measure to prohibit slippage, with exceptions for safety concerns, mechanical issues, or dogfish preventing pumping, is sufficient to discourage indiscriminate discarding of catch and improve monitoring in the herring fishery. They also believe the proposed slippage caps violates National Standard 2 (not based on the best scientific information available) and National Standard 10 (lacks any serious consideration of safety) and should not be approved.

Response: NMFS agrees that the slippage prohibition and the associated released catch affidavit requirement are expected to provide a strong incentive to minimize the discarding of unsampled and increased information regarding discards. As described previously, NMFS agrees with the commenter that the proposed slippage caps are inconsistent with National Standards 2 and 10.

Comment 27: Several commenters believe that the Council's modifications to the slippage cap, specifically the three-fold increase to the trigger for the slippage cap (trigger increased from 10 events to 10 events by gear type and area) and exempting slippage events due to excess catch of spiny dogfish from counting against the caps, addressed both the industry's and NMFS's concerns with safety and fairness.

Response: One of NMFS' primary concerns with the proposed slippage cap is safety. Even though the Council modified the slippage cap, slippage events resulting from situations when (1) bringing catch aboard compromises the safety of the vessel, and/or (2) mechanical failure prevents the catch from being brought aboard, would have still counted against the slippage cap. So while the Council's modification to the slippage catch helped reduce the potential for a safety risk, NMFS believes the proposed slippage cap is still inconsistent with National Standard 10.

NMFS is also concerned with fairness of the proposed slippage cap because the consequences to individual vessels of slipping catch have the potential to be inequitably applied. Vessels may continue fishing following slippage events 1 through 10, but must return to port following the 11th slippage event, regardless of the vessel's role in the first 10 slippage events. Conversely, vessels responsible for slippage events 1 through 10 may continue fishing after the 11th slippage event, provided they do not slip catch again. The Council's modification to the amount of the trigger for the slippage cap does not address NMFS's concern that the consequences of slipping catch do not uniformly apply across the fleet to vessels that slip catch.

Comment 28: One commenter is concerned that there are inconsistent and misleading statements in the FEIS regarding the need for additional goals, objectives, and standards for an industry-funded observer program. The commenter believes that Amendment 5 contains a comprehensive set of goals and objectives for the fishery and its monitoring program and that no further development of goals and objectives are needed. Additionally, with respect to standards for observer service providers, the commenter believes that the amendment is clear that NEFOP standards would apply to observer service providers.

Response: The Amendment 5 FEIS does contain goals and objectives for an industry-funded observer program. However, NMFS determined that the proposed measures for observer service provider requirements were inseparable from the 100-percent observer coverage requirement. Therefore, these proposed measures were disapproved along with the 100-percent observer coverage requirement. The Council will likely revisit these issues when it considers the industry-funded observer coverage omnibus amendment.

Comment 29: One commenter believes that measures to improve at-sea sampling proposed for limited access herring vessels should also be applied to open access vessels (Categories D and E). Additionally, the requirement for limited access vessels to provide an observer with visual access to the codend or purse seine after pumping has ended is a loophole to avoid bringing fish on aboard.

Response: When developing Amendment 5, the Council considered applying measures to improve at-sea sampling, such as increased observer coverage, requirements to help improve at-sea sampling, and prohibiting slippage, to Category D vessels. However, because Category D vessels catch such a small percentage of total herring harvest (less than 2 percent), the Council recommended that compliance burden associated with the new at-sea sampling requirements in Amendment 5 only apply to the vessels that harvest the majority of the herring. NMFS can only approve or disapprove measure in Amendment 5; it cannot change or modify measures in Amendment 5.

Regarding Category E vessels, Amendment 5 does not consider whether Category E permits would be subject to the same catch monitoring requirements as limited access vessels. When describing or analyzing catch monitoring requirements, Amendment 5 does not describe extending catch monitoring requirements for limited access vessels to Category E vessels, nor does it analyze the impacts of catch monitoring requirements on Category E vessels. Because the limited access catch monitoring requirements were not discussed or analyzed in relation to Category E vessels, this action does not extend those catch monitoring requirements to Category E vessels.

Amendment 5 prohibits slippage, and NMFS expects that this prohibition will reduce the discarding of unsampled catch. However, the pumps and hoses that remove fish from the codend and bring it aboard the vessel are not able to pump aboard every last fish out of the codend or purse seine. If vessels are not able to bring codends/purse seines aboard the vessel after pumping is completed, the requirement that vessels

must provide the observer with visual access to codend/purse seine, and any of its contents after pumping has ended is intended to help the observer document what, if any, catch remains in the codend/purse seine after pumping.

Comment 30: Several commenters support proposed measures requiring limited access herring vessels to provide observer with: (1) Safe sampling stations, (2) reasonable assistance, (3) notification of pumping and sampling, (4) visual access to codend or purse seine, and (5) estimated weight of catch and discard.

Response: NMFS recognizes the commenters' support for these measures, and believes these measures will help improve monitoring in the herring fishery.

Comment 31: One commenter believes that Amendment 5 should require vessels pair trawling together to both carry observers, as this would be a simple measure to prevent catch from being pumped to a vessels without an observer and, therefore, not be available for sampling.

Response: NEFOP randomly assigns observers to herring vessels consistent with SBRM coverage requirements to optimize sampling of the herring fishery. If NEFOP desires to place observers on both vessels in a pair trawl operation, then it can do so. The Council will be considering a 100-percent observer coverage requirement for the herring fishery in the observer-funding omnibus amendment. Until then, NEFOP will continue to assign observers to herring vessels in order to best meet SBRM requirements.

4. Comments on Measures To Address River Herring Interactions

Comment 32: Some commenters urged NMFS to promptly implement Framework 3 to the Herring FMP, which would develop and implement herring and shad catch caps. They disagree with NMFS's statement in the proposed rule that a catch cap developed in a framework cannot be implemented prior to the implementation of Amendment 5, stating that the authority to set incidental catch caps in the herring fishery was established through Amendment 1 to the Herring FMP.

Response: Amendment 1 identified catch caps as management measures that could be implemented via a framework or the specifications process, with a focus on a haddock catch cap for the herring fishery. Amendment 5 contains a specific alternative that considers implementing a river herring catch cap through a framework or the specifications process, while Amendment 1 does not specifically consider or analyze bycatch measures or catch caps for river herring. On the basis of the explicit consideration of a river herring catch cap and the accompanying analysis in Amendment 5, NMFS advised the Council that it would be more appropriate to consider a river herring catch cap in a framework subsequent to the implementation of Amendment 5.

While Amendment 5 contains preliminary analysis of a river herring catch cap, additional development of a range of alternatives (e.g., amount of cap, seasonality of cap, consequences of harvesting cap) and the environmental impacts (e.g., biological, economic) of a river herring catch cap is necessary prior to implementation. Therefore, it is more appropriate to consider implementing a river herring catch cap through a framework, rather than through the specifications.

At its June 2013 meeting, the Council discussed the development of river herring catch caps in Framework 3 to the Herring FMP. The Council considered establishing catch caps by area and gear, as well as establishing catch caps for both river herring and shad. While Amendment 5 does not explicitly consider catch caps for shad, river herring and shad are closely related species and the nature of their encounters with the herring fishery are similar. Therefore, implementing a catch cap that applies to both river herring and shad is likely a natural extension of the catch cap considered in Amendment 5, and Framework 3 would specifically evaluate the technical merits of developing a shad catch cap for the herring fishery. At its September 2013 meeting, the Council took final action on Framework 3 and recommended establishing river herring and shad catch caps for midwater and bottom trawl gear in the herring fishery. Framework 3, if approved, is expected to be implemented in the spring or summer of 2014.

Comment 33: The Council clarified that the ability to establish catch caps for river herring was intended to also apply to shad. The FEIS for Amendment 5 contains life history, stock status, and state fishery information for shad, as well as analysis on the co-occurrence of river herring and shad and the potential impacts of Amendment 5 measures to address fishery interactions with both river herring and shad.

Response: Given the similar life histories of river herring and shad, and that both are encountered in the herring fishery, establishing catch caps would apply to both river herring and shad is likely a natural extension of the catch cap considered in Amendment 5. However, Amendment 5 was not explicit that river herring catch caps would apply to shad; therefore, the analysis in Framework 3 will need to more fully explain and support establishing catch caps for both river herring and shad.

Comment 34: Several commenters expressed support for establishing catch caps for river herring and shad catch caps as quickly as possible. Additionally, some stressed that NMFS must assist the Council in developing and implementing these catch caps as they are the only regulatory measure in Amendment 5 that will satisfy the MSA's requirement to minimize bycatch to the extent practicable and address the Court-ordered remedy for Amendment 4 to the Herring FMP.

Response: NMFS is supporting the Council in its efforts to establish river herring/shad catch caps for the Atlantic herring fishery. The Council developed Framework 3 to consider establishing river herring and shad catch caps for the herring fishery. The Council discussed a range of catch cap alternatives on June 18, 2013, and voted to adopt measures in Framework 3 on September 26, 2013. The Council recommended a combined river herring/shad catch cap (based on the median of historical catch) for the herring fishery, specifically for mid-water trawl gear in the Gulf of Maine, mid-water trawl gear in the Cape Cod area, and for both bottom and mid-water trawl gears in Southern New England. Council staff is currently finalizing Framework 3, and its accompanying environmental assessment, and submitted it to NMFS for review in January 2014. If approved, NMFS expects to implement river herring/shad catch caps for the herring fishery in 2014.

Based on the ASMFC's recent river herring and shad assessments, data are not robust enough to determine a biologically based river herring/shad catch cap and/or assess the potential effects on river herring/shad populations of such a catch cap on a coast-wide scale. However, both the Council and NMFS believe catch caps would provide a strong incentive for the herring industry to continue avoiding river herring and shad and reduce river herring and shad bycatch to the extent practicable.

NMFS disagrees that the river herring/shad catch caps are the only measure in Amendment 5 that will satisfy the MSA's requirement to minimize bycatch to the extent practicable. Rather, Amendment 5 implements several measures that address bycatch in the herring fishery: (1) Prohibiting catch from being discarded prior to sampling

by an at-sea observer (known as slippage), with exceptions for safety concerns, mechanical failure, and spiny dogfish preventing catch from being pumped aboard the vessel, and requiring a released catch affidavit to be completed for each slippage event; (2) expanding at-sea sampling requirements for all midwater trawl vessels fishing in groundfish closed areas; (3) establishing a new open access permit to reduce the potential for the regulatory discarding of herring in the mackerel fishery; (4) establishing the ability to consider a river herring catch cap in a future framework; (5) establishing River Herring Monitoring/Avoidance Areas; (6) evaluating the ongoing bycatch avoidance program investigation of providing real-time, cost-effective information on river herring distribution and fishery encounters in River Herring Monitoring/Avoidance Areas; and (7) expanding and adding reporting and sampling requirements designed to improve data collection methods, data sources, and applications of data to better determine the amount, type, disposition of bycatch. NMFS believes these measures provide incentives for bycatch avoidance and will allow NMFS to gather more information that may provide a basis for future bycatch avoidance or bycatch mortality reduction measures. These measures are supported by sufficient analysis and consideration of the best available scientific information and represent the most practicable bycatch measures for the Herring FMP based on this information at this time.

Comment 35: Several commenters urged disapproval of the voluntary program investigating river herring distribution and fishery encounters because they believe as a voluntary program, it has no place in a regulatory action and will not satisfy the MSA's requirement to minimize bycatch to the extent practicable.

Response: NMFS disagrees with the commenter's assertion that the program has no place in a regulatory action and will not satisfy the MSA's requirement to minimize bycatch to the extent practicable. As described previously, Amendment 5 contains several measures that address bycatch in the herring fishery. While the voluntary program for river herring monitoring and avoidance does not currently include regulatory requirements, NMFS believes the program, along with the Council's formal evaluation of the program, has the potential to help vessels avoid river herring during the fishing season and to gather information that may help predict and prevent future interactions. Additionally, as described previously, NMFS believes Amendment 5 establishes several measures that minimize bycatch, provide incentives for bycatch avoidance, and will allow NMFS to gather more information that may provide a basis for future bycatch avoidance or bycatch mortality reduction measures. These measures are supported by sufficient analysis and consideration of the best available scientific information and represent the most practicable bycatch measures for the Herring FMP based on this information at this time.

Comment 36: Several commenters support: Amendment 5 establishing River Herring Monitoring/Avoidance Areas, although some caution that this measure does not satisfy the MSA National Standard 9 requirements; Amendment 5 establishing River Herring Protected Areas; and the approval of a prohibition on fishing in River Herring Monitoring/Avoidance Areas without a NMFS-approved observer.

Response: Amendment 5 establishes River Herring Monitoring/Avoidance Areas and NMFS acknowledges the commenters' support for that measure. As described previously, Amendment 5 contains several measures, including establishing River Herring Monitoring/Avoidance Areas, that address the MSA's requirement to minimize bycatch to the extent practicable.

Amendment 5, as adopted by the Council, does not propose establishing River Herring Protection Areas, instead it proposes establishing River Herring Monitoring/Avoidance Areas. The Council considered establishing River Herring Protection Areas but instead choose to recommend River Herring Monitoring/Avoidance Areas and the development of a river herring catch cap to advance the goal of river herring monitoring by providing the industry with incentives to develop their own methods to minimizing river herring bycatch. Because NMFS cannot approve and implement measures that are not proposed in Amendment 5, it cannot approve and implement River Herring Protection Areas.

The proposed measure to require vessels to carry a NMFS-approved observer when fishing in the River Herring Monitoring/Avoidance Areas was part of the Suite of measures proposing to require 100-percent observer coverage and an industry contribution of $325 per day on Category A and B vessels. As described previously, NMFS disapproved that proposed 100-percent observer coverage measure because the measure was not sufficiently developed to avoid conflicting with the Antideficiency Act and amounted to an unfunded mandate. NMFS believes the Suite of proposed measures associated with the 100-percent observer coverage requirement are inseparable from the 100-percent observer coverage requirement; therefore, NMFS had to disapprove those measures too. The Council will likely revisit observer coverage in the herring fishery when it considers the industry-funded observer coverage omnibus amendment.

Comment 37: One commenter supports the approval of the ongoing, voluntary program investigating river herring encounters in the herring fishery so that the fleet can be alerted to areas with concentrations of river herring in real time and move away from those areas. Some commenters support the voluntary program because it helps address the requirement to minimize bycatch to the extent practicable. One commenter does not support establishing River Herring Monitoring/Avoidance Areas because they believe the measure conflicts with the ongoing avoidance program and that the measure may be used to prohibit herring fishing in certain areas.

Response: NMFS agrees with the commenter who stated that the ongoing program can help the fleet recognize and avoid areas with high concentrations of river herring, thereby helping to minimize bycatch in the herring fishery. This action allows for a comprehensive Council evaluation of the ongoing, voluntary river herring avoidance program. As part of that evaluation, the Council can consider adjustments to the River Herring Monitoring/Avoidance Areas and whether measures associated with the River Herring Monitoring/Avoidance Areas, or the areas themselves, conflict with the river herring avoidance program.

Comment 38: Two commenters expressed concern with establishing River Herring Monitoring/Avoidance Areas. Their concerns were based on the ability to obtain/fund increased observer coverage in these areas and the potential for redundancy with river herring catch caps. One commenter recommended that coverage levels for these areas not be established in this action and that NMFS delay in defining these areas until river herring catch caps are established.

Response: NMFS believes that River Herring Monitoring/Avoidance Areas and the river herring catch caps serve complementary purposes in management of the herring fishery and are not redundant. However, modifications to both River Herring

Monitoring/Avoidance Areas and river herring catch caps can be considered through the specifications and/or a framework adjustment. If these measures become duplicative, they can be modified in a future action.

Because the proposed requirement for observer coverage in River Herring Monitoring/Avoidance Areas is inseparable from the disapproved 100-percent observer coverage measure, no required level of observer coverage for River Herring Monitoring/Avoidance Areas is established in this action. The Council will likely revisit observer coverage in the herring fishery when it considers the industry-funded observer coverage omnibus amendment.

Comment 39: One commenter supports the measure that would establish a river herring catch cap through a future framework, and believes that establishing a catch cap may improve the performance of the voluntary river herring avoidance program.

Response: This action allows a river herring catch cap to be established through a future framework. Establishing a catch cap may improve the performance of the river herring avoidance program by providing a strong incentive to avoid and reduce river herring bycatch to the extent practicable. The Council is expected to evaluate the interaction between catch caps and the avoidance program when it formally evaluates the avoidance program.

Comment 40: One commenter supports Amendment 5 establishing a mechanism to consider regulatory requirements for a byatch avoidance strategy in a future action.

Response: This action establishes a mechanism to develop, evaluate, and consider regulatory requirements for a river herring bycatch avoidance stategy. Additionally, this action establishes River Herring Monitoring/Avoidance Areas that will likely help support any future considerations of river herring bycatch avoidance strategies.

5. Comments on Measures To Address Midwater Trawl Access to Groundfish Closed Areas

Comment 41: Many commenters recommended that NMFS approve measures expanding the at-sea monitoring of midwater trawl vessels fishing in groundfish closed areas, including 100-percent observer coverage and Closed Area I sampling requirements, to improve catch monitoring in the herring fishery. Additionally, some commenters recommended that expanded at-sea monitoring requirements for midwater trawl vessels fishing in groundfish closed areas should also apply to vessels with the new Areas 2/3 Open Access Permit (Category E).

Response: This action expands at-sea monitoring requirements to all herring vessels fishing with midwater trawl gear in groundfish closed areas, regardless of permit type, consistent with the commenters' recommendations.

Comment 42: One EAG urges NMFS to keep at-sea monitoring requirements in place for midwater trawl vessels fishing in the groundfish closed areas under the Omnibus EFH Amendment 2 or any changes to the groundfish closed areas under the Northeast Multispecies FMP, unless and until such actions explicitly change the herring vessel access requirements and fully analyzes the impacts of those changes.

Response: The Council's intent for measures specifying midwater trawl access to groundfish closed areas was that those measures would be dynamic and evolve as requirements and restrictions in the groundfish closed areas evolved. If other Council actions modify requirements and/or restrictions for groundfish closed areas, those actions will consider modifications to the measures in this action implementing requirements for midwater trawl access to groundfish closed areas. If the Council considers changes to the measures implemented in this action, the action considering the changes would fully analyze the impacts of those changes.

Comment 43: Some commenters believe the relatively low amount of groundfish bycatch in groundfish closed areas does not warrant expanding at-sea sampling requirements for midwater trawlers. Commenters recognize that midwater trawl vessels do catch haddock, but they believe the catch of haddock in the herring fishery is already managed through a haddock catch cap. Additionally, one commenter is concerned that NMFS does not have adequate resources to place observers on all trips to Groundfish Closed Area 1, that expanding those at-sea monitoring requirements to all groundfish closed areas would further dilute available funds, and that it would be impracticable for NMFS to implement additional observer coverage requirements without additional funding.

Response: The Council and NMFS both believe it is important to better understand the nature of catch, including directed catch, bycatch, and incidental catch, in the herring fishery. As a way to improve that understanding, this action incrementally expands the at-sea monitoring requirements, including a 100-percent observer coverage requirement, to midwater trawl vessels fishing in groundfish closed areas.

Expanding the Closed Area I sampling requirement to midwater trawl vessels fishing in groundfish closed areas provides a greater source of information regarding the nature and extent of incidental catch and bycatch in the herring fishery. This measure also addresses perceived inequities expressed by many stakeholders during development of Amendment 5 regarding allowing gear that is capable of catching groundfish into the groundfish closed areas. This action still allows the midwater trawl fishery to operate in the groundfish closed areas, but ensures that monitoring and sampling are maximized, based on measures that already have proven to be effective in Closed Area I.

Under current practice, as well as under the proposed revisions to the SBRM that are being developed, the NEFSC would allocate all existing and specifically identified observer funding to support SBRM observer coverage. Therefore, herring vessels would be assigned observers based on SBRM coverage, including trips by midwater trawl vessels into the groundfish closed areas. All trips by midwater trawl vessels into the groundfish closed areas would have observer coverage, thereby increasing observer coverage in the groundfish closed areas. But until there is additional funding available, the number of trips midwater trawl vessels can make into the groundfish closed areas would be limited by SBRM funding. Additional observer coverage specifically for midwater trawl trips into the groundfish closed areas would be possible after SBRM monitoring is fully funded or if funds are specifically appropriated for such trips.

If a midwater trawl vessel cannot fish in the groundfish closed areas on a particular trip because an observer is not assigned to that trip, any negative economic impact to that vessel is expected to be minimal. Analyses in the FEIS indicate that less than 10-percent of herring fishing effort occurs in the groundfish closed areas and less than 13-percent of the annual herring revenue comes from trips into the groundfish closed areas. Midwater trawl vessels will still have access to the groundfish closed areas during SBRM covered trips, even if there are less SBRM covered trips than in years past. Additionally, midwater trawl vessels can fish outside the groundfish closed areas without an observer.

NMFS agrees that analyses in the Amendment 5 FEIS suggest that

midwater trawl vessels are not incidentally catching significant amounts of groundfish either inside or outside the groundfish closed areas. Additionally, NMFS agrees that the majority of groundfish catch by midwater trawl vessels is haddock, and the catch of haddock by midwater trawl vessels is already managed through a haddock catch cap. However, this action expands at-sea monitoring requirements to midwater trawl vessels fishing in all groundfish closed areas because it will allow the midwater trawl fishery to continue to operate in the groundfish closed areas, while ensuring that opportunities for monitoring and sampling are maximized.

Comment 44: Several commenters urged disapproval of the measure expanding at-sea sampling of midwater trawl vessels fishing in groundfish closed areas and, instead, recommended that the use of midwater trawl gear in groundfish closed areas be prohibited.

Response: As described previously, this action expands at-sea monitoring requirements to midwater trawl vessels fishing in all groundfish closed areas because it will ensure that opportunities for monitoring and sampling are maximized while still allowing the midwater trawl fishery to continue to operate in the closed areas. Because a measure to prohibit midwater trawl gear in groundfish closed areas was not recommended by the Council as part of Amendment 5, it cannot be implemented as part of this action.

6. Comments on Adjustments to List of Measures Modified Through Framework Adjustments or Specifications

Comment 45: Two EAGs commented that NMFS should modify the list of items that could be developed through a framework or specifications package to exclude observer coverage levels, stating that modifying observer coverage levels through a framework or the specifications was not contemplated in the DEIS for Amendment 5.

Response: NMFS believes the DEIS does contemplate modifying observer coverage levels through a framework adjustment. Section 3.5 of the DEIS for Amendment 5 explained that, if any new management measures are adopted in Amendment 5, changes to those measures and related adjustments would be added to the list of measures that can be implemented through a framework adjustment to the Herring FMP in the future. Additionally, the DEIS explained that the public should consider whether or not any of the new measures proposed in Amendment 5 should be allowed to be modified in the future through a framework adjustment. The DEIS explained that for the FEIS, the list of measures would be based on the management measures adopted by the Council.

As part of Amendment 5, the Council adopted two measures specifying observer coverage levels, the 100-percent observer coverage requirement for Category A and B vessels, and the 100-percent observer coverage requirement for midwater trawl vessels fishing in the groundfish closed areas. Because the Council adopted observer coverage levels as part of Amendment 5, observer coverage levels were added to the list of measures in the FEIS that could be modified through a framework adjustment when appropriate.

While NMFS approved, and this action implements, the 100-percent observer coverage requirement for midwater trawl vessels fishing in the groundfish closed areas, NMFS disapproved the 100-percent observer coverage requirement for Category A and B vessels. The Council is expected to revisit the issue of specifying observer coverage levels outside of groundfish closed areas in the NMFS-led observer-funding omnibus amendment starting in January 2014. Therefore, at this time, NMFS concurs with the commenters, and believes it is not appropriate to include observer coverage levels outside of groundfish closed areas in the list of measures that could be modified through a framework.

Comment 46: One commenter supports modifying the list of measures that could be modified through a framework to only include: (1) Changes to vessel trip notification and declaration requirements; (2) provisions for river herring bycatch avoidance program; and (3) river herring catch caps. They believe these measures should be changed through a framework, and not the specifications, because the framework process is a more deliberative way to make substantive changes to management of the herring fishery.

Response: This action allows for modifications to vessel trip notification and declaration requirements, provisions for the river herring bycatch avoidance program, and river herring catch caps to be made through a framework when appropriate. Additionally, it allows for modifications to river herring catch caps to be made through the specifications process. The ability to modify river herring catch caps, especially the amount of catch caps, through the specifications process is necessary to ensure catch caps are based on the best available data and that catch caps are revisited and modified, if necessary, as frequently as other specifications for the herring fishery.

Changes From the Proposed Rule

The proposed rule for Amendment 5 contained all the measures in the amendment that were adopted by the Council in June 2012. As described previously, the proposed rule highlighted NMFS's utility and legal concerns with three measures adopted by the Council. NMFS disapproved the 100-percent observer coverage measure coupled with a $325 per day industry contribution, slippage cap, and dealer reporting requirements, thus, the regulatory requirements associated with those three measures are not included in this final rule. Specifically, the following sections from the proposed rule have been removed: §§ 648.11(h), 648.11(l)(5), 648.14 (r)(2)(xiii), 648.200(g)(5), 648.203(c), and 648.206(b)(33) and (b)(34) and are not being implemented in this rule. Additionally, proposed § 648.206(b)(32) was revised to remove provisions related to the slippage cap.

The proposed rule stated that herring carriers were only permitted to transport herring. This final rule clarifies that requirement and specifies that herring carriers are permitted to transport herring and certain groundfish species, including haddock and up to 100 lb (45 kg) of other regulated groundfish species, consistent with current groundfish regulations. Additionally, to ensure consistency with other Northeast Region VMS requirements, the final rule clarifies that once a vessel declares a herring carrier trip via VMS, it is bound to VMS operating requirements for the remainder of the fishing year.

To avoid confusion, this final rule standardizes the title of the affidavit required when catch is slipped by midwater trawl vessels fishing in groundfish closed areas in both the Northeast multispecies and herring regulations. It is now called a released catch affidavit. Lastly, this final rule clarifies that (1) Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are considered to be operational discards and not slippage and (2) discards that occur after the catch is brought on board and sorted are also not considered slippage.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 5 to the Herring FMP is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a FEIS for Amendment 5; a notice of availability was published on April 26, 2013 (78 FR 24743). The FEIS describes the impacts of the proposed measures on the environment. Revisions to fishery management program provisions, including permitting provisions, vessel notification requirements, and measures to address carrier vessels and transfers at-sea are expected to improve catch monitoring in the herring fishery, with positive biological impacts on herring and minimal negative economic impacts on fishery participants. Measures to improve at sea-sampling by observers and minimize the discarding of catch before it has been sampled by observers are also expected to improve catch monitoring and to have positive biological impacts on herring. The economic impacts on fishery participants of these measures are varied, but negative economic impacts are expected to be moderate compared to status quo. Measures to address bycatch are expected to have positive biological impacts and moderate negative economic impacts on fishery participants. Lastly, all measures are expected to have positive biological impacts on non-target species and neutral impacts on habitat. In partially approving Amendment 5 on July 18, 2013, NMFS issued a record of decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses to support this action. A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

Statement of Need

This action helps improve monitoring and addresses bycatch issues in the herring fishery through responsible management. A description of the action, why it was considered, and the legal authority for the action is contained elsewhere in this preamble and is not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received 8,163 comments during the comment periods on the NOA and proposed rule. Those comments, and NMFS' responses, are contained elsewhere in this preamble and are not repeated here. NMFS did not receive any comments focused solely on the economic impacts of this rule.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The Office of Advocacy at the Small Business Administration (SBA) suggests two criteria to consider in determining the significance of regulatory impacts: Disproportionality and profitability. The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of ''small entity''), not the difference between segments of small entities. The changes in profits, costs, and net revenues due to Amendment 5 are not expected to be disproportional for small versus large entities, as the proposed action will affect all entities, large and small, in a similar manner. Therefore, this action is not expected to have disproportionate impacts or place a substantial number of small entities at a competitive disadvantage relative to large entities.

In 2011, there were 2,240 vessels with herring permits. Of these vessels, 91 vessels with limited access herring permits (Category A, B, and C) and 2,149 vessels with open access herring permits (Category D) would be considered small entities for Regulatory Flexibility Act (RFA) purposes. Category D vessels participate incidentally in the herring fishery and would only be subject to the proposed regulatory definitions and the requirements for midwater trawl vessels fishing in the Groundfish Closed Areas. The regulatory definitions are primarily administrative in nature; however they may reduce confusion and/or errors related to catch reporting. Additionally, currently, there are no Category D vessels that fish with midwater trawl gear. Therefore, this RFA analysis is focused on the 91 vessels with limited access herring permits.

Herring vessels can work cooperatively in temporary, short-term partnerships for pair trawling or seining activities, and vessels may also be affiliated with processing plants. NMFS currently has no data regarding vertical integration or ownership. Therefore, for the purposes of this RFA analysis, the entity in the harvesting sector is the individual vessel.

Subsequent to completing the IRFA for Amendment 5, on June 20, 2013, the 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. Therefore, this FRFA contains updated permit information consistent with SBA's revised size standards. NMFS reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, 91 entities subject to this action were considered small entities. These entities would all continue to be considered small under the new size standards. However, using more recent permit information, the number of entities that would be considered small under SBA's revised size standards decreased between 2011 and 2012.

Based on more recent permit information, NMFS has now identified 70 entities (compared to 91 in the original analysis) that held at least one limited access herring permit (category A, B, or C) in 2012. Many of these entities were active in both finfish fishing and shellfish fishing industries. In order to make a determination of size, fishing entities are first classified as participants in either the Finfish Fishing or Shellfish Fishing industry. If an entity derives more than 50 percent of its gross revenues from shellfish fishing, the $5.0-million standard for total revenues is applied. If an entity derives more than 50 percent of its gross revenues from finfish fishing, the $19.0-million standard for total revenues is applied. Based on the revised economic criteria, as well as updated permit and revenue data, there are 7 large shellfish fishing entities to which this final rule will apply and 63 small entities to which this final rule will apply.

Of the 63 small entities, 39 reported no revenue from herring fishing during 2012. For the 24 small entities that were active in the herring fishery, median gross revenues were approximately $872,000, and median revenues from the herring fishery were approximately $219,000. There is large variation in the importance of herring fishing for these small entities. Eight of these 24 active small entities derive less than 5 percent of their total fishing revenue from

herring. Seven of these 24 active small entities derive more than 95 percent of their total fishing revenue from herring.

Amendment 5 establishes measures to improve catch reporting and address bycatch. These measures primarily affect limited access herring vessels, the component of the herring fleet that harvests approximately 98-percent of the available herring harvest. After considering the new permit information and the new SBA size standards, NMFS still believes that the proposed action would affect all entities, whether large or small, in a similar manner because measures in Amendment 5 apply similarly across the limited access herring fleet.

Section 5.0 in Amendment 5 describes the vessels, key ports, and revenue information for the herring fishery; therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Minimizing Significant Economic Impacts on Small Entities

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB) under control number 0648–0674. The new requirements, which are described in detail in the preamble, were approved as a new collection. Amendment 5 also removes a VMS power-down exemption for herring vessels and a catch reporting requirement for herring carrier vessels. Amendment 5 prohibits herring vessels from powering-down their VMS units in port, unless specifically authorized by the NMFS RA. The existing power-down exemption was approved under OMB Control Number 0648–0202 and, upon renewal, will be removed from that information collection. Additionally, Amendment 5 removes the existing weekly VTR requirement for herring carrier vessels. That requirement was approved under OMB Control Number 0648–0212 and, upon renewal, will be removed from that information collection. The action does not duplicate, overlap, or conflict with any other Federal rules.

Amendment 5 establishes two new herring permits. The application process to obtain a new Areas 2/3 Open Access Permit takes an estimated 1 min to complete, and costs $0.46 to mail. The new Areas 2/3 Open Access Herring Permit requires the vessel to purchase and maintain a VMS. Because other Northeast Federal permits require vessels to maintain a VMS, it is estimated that only six vessels that were issued the current open access permit, which is re-named the All Areas Open Access Permit as part of this action, do not already have a VMS. The average cost of purchasing and installing a VMS is $3,400, the VMS certification form takes an estimated 5 min to complete and costs $0.46 to mail, and the call to confirm a VMS unit takes an estimated 5 min to complete and costs $1. The average cost of maintaining a VMS is $600 per year. Northeast regulations require VMS activity declarations and automated polling of VMS units to collect position data. Each activity declaration takes an estimated 5 min to complete and costs $0.50 to transmit. If a vessel takes an average of 5 trips per year, the annual burden estimate for the activity declarations would be 25 min and $3. Each automated polling transmission costs $0.06, and a vessel is polled once per hour every day of the year. The annual estimated cost associated with polling is $526. In summary, the total annual burden for a vessel to purchase and maintain a VMS is estimated to be 35 min and $4,530.

Amendment 5 also requires that vessels issued the new Areas 2/3 Open Access Herring Permit comply with existing catch reporting requirements for Category C vessels—specifically the submission of daily VMS reports and weekly VTRs. The cost of transmitting a catch report via VMS is $0.60 per transmission and it is estimated to take 5 min to complete. If a vessel takes an average of 5 trips per year and each trip lasts an average of 2 days, the total annual burden of daily VMS reporting for a vessel is estimated to be 50 min and $6. Category D vessels are currently required to submit weekly VTRs, so there will be no additional burden associated with VTRs for those vessels. If a vessel without a Category D permit was issued the new Areas 2/3 Open Access Herring Permit, the annual burden estimate of VTR submissions is $18. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by $0.46 to equal $18. The VTR is estimated to take 5 min to complete. Therefore, the total annual burden of weekly VTRs is estimated to be $18, and 3 hr and 20 min.

This action establishes new reporting burdens associated with obtaining an At-Sea Herring Dealer Permit. The new herring dealer permit is for herring carriers that sell fish. Historically, approximately 25 vessels per year have been issued an LOA to act a herring carrier. The application for an At-Sea Herring Dealer Permit would take an estimated 15 min to complete and $0.46 to mail. The annual burden to renew an At-Sea Herring Dealer Permit is estimated to be 5 min to complete the renewal, and $0.46 to mail the renewal. Dealers are required to submit weekly reports via the internet. These reports are estimated to take 15 min to complete; therefore, the annual burden associated with dealer reporting is 13 hr. The cost for this information collection is related to internet access. The 25 vessels that may obtain the new At-Sea Herring Dealer Permit may not already be accessing the internet for other reasons/requirements and would have to obtain internet access. Internet access is required for the submission of weekly dealer reports. Operating costs consist of internet access, available through either dial-up or cable modem, with an average annual cost of $652 per year. Therefore, the annual cost burden associated with dealer reporting is estimated to be $652.

Amendment 5 expands the number of herring vessels required to submit a VMS pre-landing notification and adds a gear declaration to the existing VMS activity declaration requirement. A subset of herring vessels are currently required to notify NMFS Office of Law Enforcement (OLE) via VMS at least 6 hr prior to landing, and this action expands that requirement to all limited access herring vessels, vessels issued the new Areas 2/3 Open Access Herring Permit (Category E), and herring carrier vessels. It is estimated that Amendment 5 will require an additional 51 Herring Category C vessels, 80 Herring Category E vessels, and 25 herring carriers to submit VMS pre-landing notification. Each VMS pre-landing notification is estimated to take 5 min to complete and costs $1. Category C vessels are estimated to take an average of 13 trips per year, so the total annual burden for a Category C vessel making VMS pre-landing notifications is estimated to be 65 min and $13. The new Category E vessels will take an estimated 5 trips per year, so the total burden for a Category E vessel making VMS pre-landing notifications is estimated to be 25 min and $5. Herring carriers are estimated to take an average of 4 trips per year, so the total annual burden for a herring carrier making VMS pre-landing notifications is estimated to be 20 min and $4. The gear declaration applies to limited access herring vessels. There is no additional reporting burden associated with the gear declaration because it is only adding an additional field to the existing VMS activity declaration requirement, approved under OMB 0648–0202.

Amendment 5 allows vessels to choose between enrolling as a herring

carrier with an LOA or declaring a herring carrier trip via VMS. Vessels may declare a herring carrier trip via VMS, if they already have and maintain a VMS, or continue to request an LOA. There is no additional reporting burden associated with this measure because both the LOA and the VMS activity declaration are existing requirements for herring vessels.

Amendment 5 increases the reporting burden for measures designed to improve at-sea sampling by NMFS-approved observers. A subset of herring vessels are currently required to notify NMFS to request an observer, and this action expands that requirement to all limited access herring vessels, vessels issued the new Areas 2/3 Open Access Herring Permit (Category E), and herring carrier vessels. This pre-trip observer notification requirement is estimated to affect 156 additional vessels. Vessels will be required to call NMFS to request an observer at least 48 hr prior to beginning a herring trip. The phone call is estimated to take 5 min to complete and is free. If a vessel has already contacted NMFS to request an observer and then decides to cancel that fishing trip, Amendment 5 requires that vessel to notify NMFS of the trip cancelation. The call to notify NMFS of a cancelled trip is estimated to take 1 min to complete and is free. If a vessel takes an estimated 25 trips per year, the total annual reporting burden associated with the pre-trip observer notification is estimated to be 2 hr 30 min.

Amendment 5 requires a released catch affidavit for limited access vessels that discard catch before the catch has been made available to an observer for sampling (slipped catch). The reporting burden for completion of the released catch affidavit is estimated to average 5 min, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The cost associated with the affidavit is the postage to mail the form to NMFS ($0.46). The affidavit requirement affects an estimated 93 limited access herring vessels. If those vessels slipped catch once per trip with an observer onboard, and took an estimated 38 trips per year, the total annual reporting burden for the released catch affidavit is estimated to be 3 hr 10 min and $17. Amendment 5 requires vessels fishing with midwater trawl gear in Groundfish Closed Areas to complete a released catch affidavit if catch is discarded before it is brought aboard the vessel and made available for sampling by an observer. At this time, there are no known Category D vessels that fish with midwater trawl gear; therefore, there is no additional reporting burden, beyond that described above, for the released catch affidavit associated with Groundfish Closed Areas.

Amendment 5 requires that when vessels issued limited access herring permits are working cooperatively in the herring fishery, including pair trawling, purse seining, and transferring herring at-sea, vessels must provide to observers, when requested, the estimated weight of each species brought on board or released on each tow. NMFS expects that the vessel operator would do this for each trip, and not on a tow-by-tow basis. Vessel operators should have this information recorded and available to report to the observer, so NMFS estimates the response to take 1 min. It would not have any associated cost, since it would be a verbal notification for the observer to record.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

1. Adjustments to the Fishery Management Program

Amendment 5 revises several existing fishery management provisions, such as regulatory definitions and VMS requirements, and establishes new provisions, such as a new dealer permit and the mechanism to consider a river herring catch cap in a future framework, to better administer the herring fishery. Two alternatives, the selected action and the no action alternative, were considered for each of these provisions. Because of the administrative nature of the proposed measures, the economic impacts of the selected action relative to the no action alternative is anticipated to have a neutral or low positive economic impact on fishery-related businesses and communities. For this reason, the no action alternative was rejected for each of these provisions. Revising the regulatory definitions for transfer at-sea and offload for the herring fishery may reduce confusion and/or errors related to catch reporting, which may, in turn, improve reporting compliance, help ensure data accuracy and completeness, and lessen the likelihood of double counting herring catch. Establishing an At-Sea Herring Dealer Permit for herring carrier vessels that sell herring at sea may improve catch monitoring by allowing catch reported by harvesting vessels to be matched with sales of herring by herring carrier vessels. Expanding vessel requirements related to observer sampling may help ensure safe sampling and improve the quality of monitoring data. Measures that result in improved catch monitoring are anticipated to have low positive economic impacts because they may, over the long-term, result in less uncertainty and, ultimately, result in additional harvest being made available to the herring industry. Specifying that vessels working cooperatively in the herring fishery are subject to the most restrictive possession limit associated with the permits issued to the vessels may improve enforcement of herring possession limits in multi-vessel operations. Eliminating the VMS power-down provision for herring vessels may make provisions for herring vessels more consistent with other FMPs and enhance enforcement of the herring regulations. Lastly, establishing the mechanism to consider a river herring catch cap in a future framework may be a potential way to minimize river herring catch in the herring fishery.

Amendment 5 allows herring carriers to choose between enrolling as a herring carrier with an LOA or declaring a herring carrier trip via VMS. Currently, herring carriers enroll as herring carriers with an LOA. When vessels are enrolled as carriers they cannot have fishing gear aboard, fish for any species, or carry any species other than herring or groundfish. The LOA has a minimum enrollment period of 7 days.

In addition to the selected action, Amendment 5 considered the no action alternative (herring carriers enroll with an LOA) and a non-selected alternative (vessels must declare herring carrier trips via VMS). Both the selected action and the non-selected alternative would provide increased operational flexibility at the trip level as compared to the no

action alternative, without the minimum 7-day enrollment period. However, the non-selected alternative would require vessels that did not already use a VMS to purchase and maintain a VMS. In 2010, approximately 20 vessels that were not required to maintain a VMS aboard their vessels requested herring carrier LOAs. The cost of purchasing a VMS ranges between $1,700 and $3,300, and operating costs are approximately $40 to $100 per month. The selected action has the potential for low positive impacts for fishery-related businesses and communities resulting from the increased operational flexibility of allowing trip-by-trip planning in comparison to the no action alternative. The non-selected alternative and the selected action would both have the potential for low positive benefits from allowing trip-by-trip planning. In comparison to the selected action, the non-selected alternative may have a low negative impact by requiring vessels to purchase and maintain a VMS, but that impact would be minimal because of the small number of vessels likely affected. Overall, the selected action is anticipated to have the greatest positive impact on fishery-related business and communities in comparison the no action and non-selected alternative, but that impact is low. Because the no action and non-selected alternatives are expected to have a net negative impact, they were rejected.

Amendment 5 requires that existing pre-trip observer notification and VMS pre-landing notification requirements be expanded to additional herring vessels and that a gear declaration be added to the existing VMS activity declaration. The intent of these requirements is to: (1) Better inform NEFOP of when/where herring fishing activity may occur and assist in the effective deployment of observers; (2) better inform NMFS OLE of when/where vessels will be landing their catch land to facilitate monitoring of the landing and/or catch; and (3) provide OLE with trip-by-trip information on the gear being fished to improve the enforcement of herring gear regulations. Amendment 5 considered only one alternative to the selected action, the no action alternative. The no action alternative would not impose additional trip notification requirements; therefore, there would be no additional impacts on fishery-related business and communities. Any impact to the herring fishery because of the selected action would be through increased administrative and regulatory burden, but the number of vessels affected and the actual cost of the additionally reporting is low. In comparison to the no action alternative, the selected action is anticipated to result in improved catch monitoring and enforcement of herring regulations, translating into low positive impacts for fishery-related businesses and communities. For this reason, the no action alternative was rejected.

Dealer Reporting Requirements

Amendment 5 proposed requiring herring dealers to accurately weigh all fish and, if catch is not sorted by species, dealers would be required to document how they estimate relative species composition in each dealer report. However, the proposed measure was disapproved, so this action maintains the no action alternative. Dealers currently report the weight of fish, obtained by scale weights and/or volumetric estimates. Because the proposed action did not specify how fish are to be weighed, the proposed action is not anticipated to change dealer behavior and, therefore, is expected to have neutral impacts in comparison to the no action alternative. Amendment 5 considered three alternatives to the proposed action, the no action alternative, Option 2A, and Option 2C. Option 2A would require that relative species composition be documented annually and Option 2C would require that a vessel representative confirm each dealer report. Overall, relative to the selected, no action alternative, the proposed action and Option 2A may have a low negative impact on dealers due to the regulatory burden of documenting how species composition is estimated. In comparison, Option 2C may have a low positive impact on fishery participants, despite an increased regulatory burden, if it minimizes any loss of revenue due to data errors in the dealer reports and/or the tracking of herring catch.

Areas 2/3 Open Access Herring Permit

Amendment 5 establishes a new open access herring permit with a 20,000-lb (9-mt) herring possession limit in herring management Areas 2 and 3 for limited access mackerel vessels. Amendment 5 considered two alternatives to the selected action, the no action alternative (6,600-lb (3-mt) herring possession limit) and the non-selected alternative (10,000-lb (4.5-mt) herring possession limit). The impact of the selected action on fishery-related businesses and communities is expected to be more positive than that of the no action alternative or the non-selected alternative. There is significant overlap between the mackerel and herring fisheries. Currently, vessels issued an open access herring permit and participating in the mackerel fishery are required to discard any herring in excess of the open access permit's 6,600-lb (3-mt) possession limit. The analysis predicts that approximately 60 vessels would be eligible for the new open access herring permit. In comparison to the no action and non-selected alternatives, the selected action could decrease the occurrence of regulatory discards and increase revenue for vessels that are eligible for this permit. For this reason, the no action and non-selected alternatives were rejected.

As described previously, the cost of purchasing a VMS ranges between $1,700 and $3,300, and operating costs are approximately $40 to $100 per month. Economic impacts on small entities resulting from the purchase costs of new VMS units required by the new open access permit have been minimized through a VMS reimbursement program (July 21, 2006, 71 FR 41425) that made available approximately $4.5 million in grant funds for fiscal year (FY) 2006 for vessel owners and/or operators who have purchased a VMS unit for the purpose of complying with fishery regulations that became effective during or after FY 2006. As of April 3, 2007, an additional $4 million was being added to the fund. Reimbursement for VMS units is available on a first come, first serve basis until the funds are depleted. More information on the VMS reimbursement program is available from the Pacific States Marine Fisheries Commission (see **ADDRESSES**) and from the NMFS VMS Support Center, which can be reached at 888–219–9228.

2. Adjustments to the At-Sea Catch Monitoring

Amendment 5 proposed requiring 100-percent observer coverage on Category A and B vessels, coupled with an industry contribution of $325 per day. However, the proposed measure was disapproved, so this action maintains the no action alternative. Amendment 5 considered three alternatives to the proposed action (Alternative 2), the no action alternative (existing SBRM process for determining observer coverage levels), Alternative 3 (modified SBRM process for determining observer coverage levels), and Alternative 4 (Council-specified targets for observer coverage levels). Additionally, for each of the action alternatives, Amendment 5 considered funding options, NMFS funding (no action alternative) versus NMFS and industry funding, and observer service provider options, all observer service

providers subject to the same requirements (no action alternative) versus states as authorized observer service providers. The proposed action specifies the highest level of observer coverage in comparison to the no action alternative and the non-selected alternatives. The specific coverage levels under the no action alternative and the non-selected alternatives are unknown at this time, because they would depend on an analysis of fishery data from previous years, but coverage levels under these alternatives are expected to be less than 100 percent. The proposed action specifies an industry contribution of $325 per day. For Category A and B vessels, a contribution of $325 is estimated to be 3–6 percent of daily revenue and 8–45 percent of daily operating costs. The other non-selected alternatives (no action, Alternative 3, Alternative 4) do not specify an industry contribution, so a comparison of direct costs to industry across alternatives is not possible. The proposed action is likely to have the largest negative impact on fishery-related businesses and communities of any alternatives due to the cost of observer coverage, potentially resulting in less effort and lower catch. In the long-term, increased monitoring and improved data collections for the herring fishery may translate into improved management of the herring fishery that would benefit fishery-related businesses and communities. Options for observer service providers are likely to have neutral impacts on fishery-related businesses across alternatives.

Amendment 5 requires limited access vessels to bring all catch aboard the vessel and make it available for sampling by an observer. If catch was slipped before it was sampled by an observer, it would count against a slippage cap and require a released catch affidavit to be completed. Amendment 5 proposed that if a slippage cap was reached, a vessel would be required to return to port immediately following any additional slippage events. However, the proposed measure was disapproved and, instead, this action implements Option 2 and Option 3. Amendment 5 considered four alternatives to the proposed action: The no action alternative, Option 2, Option 3, and Option 4. The selected and non-selected alternatives include various elements of the proposed action, including a requirement to complete a released catch affidavit (Option 2), requirement to bring all catch aboard and make it available to an observer for sampling (Option 3), and catch deduction for slipped catch (Option 4). The no action alternative would not establish slippage prohibitions or slippage caps, but it would maintain the existing sampling requirements for midwater trawl vessels fishing in Groundfish Closed Area I.

Negative impacts to the herring fishery associated with all these alternatives include increased time spent pumping fish aboard the vessel to be sampled by an observer, potential decrease in vessel safety during poor operating conditions, and the administrative burden of completing a released catch affidavit. The penalties associated with slippage vary slightly across the alternatives. Negative impacts associated with the proposed action and Option 4 are likely the greatest. A deduction of 100,000 lb (45 mt) per slippage event in each management area (Option 4) would reduce the harvest available to fishing vessels and a trip termination (proposed action) after a slippage event would result in higher costs for fishing vessels, especially those fishing in offshore areas. The overall impacts of the options that propose catch deductions (Option 4) and trip termination (proposed action) are similar and, in comparison to the no action alternative, are negative. Costs associated with herring fishing trips are high, particularly with the current cost of fuel. Trips terminated prematurely could result in unprofitable trips, leaving not only the owners with debt, but crewmembers without income and negative impacts on fishery-related businesses and communities. Option 4 that proposed a catch deduction was rejected because of the potential negative economic impacts, including loss of revenue from catch deduction and operating cost of returning to port, to vessels. As described previously, the proposed action was disapproved because it was inconsistent with MSA National Standards 2 and 10. Options 2 and 3 were selected because they may improve information on catch in the herring fishery by requiring vessels operators to document when and why slippage occurs (Option 2), and by prohibiting catch from being discarded before it was sampled by an observer (Option 3). The no action alternative was rejected because it was not expected to improve information on catch in the herring fishery.

3. Measures To Address River Herring Interactions

Amendment 5 establishes River Herring Monitoring/Avoidance Areas. Amendment 5 considered two alternatives to the selected action: The no action alternative and a non-selected alternative (establishing River Herring Protection Areas). Relative to the no action alternative, the selected action and the non-selected alternative are expected to have a negative impact on fishery-related businesses and communities due to the costs associated with increased monitoring and/or area closures. The impact of the River Herring Areas would depend on the measures applied to the areas, such as increased monitoring, requirement that catch be brought aboard the vessels for sampling by observers, and closures. The non-selected option, requiring 100-percent observer coverage in the River Herring Monitoring/Avoidance Areas, would likely have the largest negative impact on fishery-related businesses and communities, especially with the industry required to pay $325 per day. The selected option, requiring all catch to be brought aboard, would have a less negative impact than the non-selected option requiring 100-percent observer coverage. The non-selected option implementing either increased monitoring or closures after a river herring catch trigger was reached would have less impact on fishery-related businesses and communities than the proposed action, because the additional requirements would not become effective until the catch trigger is reached. The selected action also includes support for the existing river herring bycatch avoidance program involving SFC, MA DMF, and SMAST. This voluntary program seeks to reduce river herring bycatch with real-time information on river herring distribution and herring fishery encounters. This aspect of the selected action has the potential to mitigate some of the negative impacts of the selected action by developing river herring bycatch avoidance measures in cooperation with the fishing industry. The no action alternative would not have provided for the formal evaluation of the existing river herring bycatch avoidance program, therefore, it was rejected. The non-selected alternative of establishing River Herring Protection Area was rejected because of the potential negative impacts of closing areas to herring fishing and not providing for support for the existing river herring bycatch avoidance program.

4. Measures To Address Midwater Trawl Access to Groundfish Closed Areas

Amendment 5 expands the existing monitoring and sampling requirements for Groundfish Closed Area I to all herring vessels fishing with midwater trawl gear in the Groundfish Closed Areas. Amendment 5 considered three

alternatives to the selected action (Alternative 3/4), the no action alternative (maintain existing sampling requirements for Closed Area I), Alternative 2 (removing existing sampling requirements for Closed Area I), and Alternative 5 (prohibiting fishing with midwater trawl gear in the Closed Areas). Compared to the no action alternative and the non-selected alternatives, the selected action would have the highest negative impact on fishery participants because of the following requirements: (1) 100-percent observer coverage, (2) bringing all catch aboard for sampling, (3) leaving the Closed Areas if catch is released before it has been sampled by an observer, (4) and completing a released catch affidavit. The midwater trawl fleet may avoid the Closed Areas if fishing in the Areas becomes too expensive. If observers are not available, the impact of the proposed action would be similar to Alternative 5, which would close the Closed Areas to midwater trawl vessels. While a portion of the herring revenue has been shown to come from the Closed Areas, that revenue is not expected to completely disappear. Instead, the midwater fleet would likely fish in other areas, this would be a potential additional cost for the fleet if those areas are less productive than the Closed Areas. The selected action is expected to improve catch data on herring vessels fishing in the Closed Areas. The no action alternative and Alternatives 2 and 5 were not selected because they would not have resulted in improved data catch for the Closed Areas by either not increasing sampling requirements in the Closed Areas (no action and Alternative 2) or by prohibiting fishing in the Closed Areas (Alternative 5).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the herring fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 7, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, the definitions for ''Atlantic herring carrier'' and ''Atlantic herring dealer'' are revised and definitions for ''Atlantic herring offload,'' ''Atlantic herring transfer at-sea,'' and ''Slippage in the Atlantic herring fishery'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic herring carrier means a fishing vessel that may receive and transport herring caught by another fishing vessel, provided the vessel has been issued a herring permit, does not have any gear on board capable of catching or processing herring, and that has on board a letter of authorization from the Regional Administrator to transport herring caught by another fishing vessel or has declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

Atlantic herring dealer means:

(1) Any person who purchases or receives for a commercial purpose other than solely for transport or pumping operations any herring from a vessel issued a Federal Atlantic herring permit, whether offloaded directly from the vessel or from a shore-based pump, for any purpose other than for the purchaser's own use as bait;

(2) Any person owning or operating a processing vessel that receives any Atlantic herring from a vessel issued a Federal Atlantic herring permit whether at sea or in port; or

(3) Any person owning or operating an Atlantic herring carrier that sells Atlantic herring received at sea or in port from a vessel issued a Federal Atlantic herring permit.

Atlantic herring offload means to remove, begin to remove, to pass over the rail, or otherwise take Atlantic herring off of or away from any vessel issued an Atlantic herring permit for sale to either a permitted at-sea Atlantic herring dealer or a permitted land-based Atlantic herring dealer.

* * * * *

Atlantic herring transfer at-sea means a transfer from the hold, deck, codend, or purse seine of a vessel issued an Atlantic herring permit to another vessel for personal use as bait, to an Atlantic herring carrier or at-sea processor, to a permitted transshipment vessel, or to another permitted Atlantic herring vessel. Transfers between vessels engaged in pair trawling are not herring transfers at-sea.

* * * * *

Slippage in the Atlantic herring fishery means catch that is discarded prior to it being brought aboard a vessel issued an Atlantic herring permit and/or prior to making it available for sampling and inspection by a NMFS-approved observer. Slippage includes releasing catch from a codend or seine prior to the completion of pumping the catch aboard and the release of catch from a codend or seine while the codend or seine is in the water. Fish that cannot be pumped and remain in the codend or seine at the end of pumping operations are not considered slippage. Discards that occur after the catch is brought on board and sorted are also not considered slippage.

* * * * *

■ 3. In § 648.4, paragraph (a)(10)(ii) is revised and paragraph (a)(10)(vi) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(10) * * *

(ii) *Atlantic herring carrier.* An Atlantic herring carrier must have been issued and have on board a herring permit and a letter of authorization to receive and transport Atlantic herring caught by another permitted fishing vessel or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.10(m)(1). Once a vessel declares an Atlantic herring carrier trip via VMS, it is bound to the VMS operating requirements, specified at § 648.10, for the remainder of the fishing year. On Atlantic herring carrier trips under either the letter of authorization or an Atlantic herring carrier VMS trip declaration, an Atlantic herring carrier is exempt from the VMS, IVR, and VTR vessel reporting requirements, as specified in § 648.7 and subpart K of this part, except as

otherwise required by this part. If not declaring an Atlantic herring carrier trip via VMS, an Atlantic herring carrier vessel must request and obtain a letter of authorization from the Regional Administrator, and there is a minimum enrollment period of 7 calendar days for a letter of authorization. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not conduct fishing activities, except for purposes of transport, or possess any fishing gear on board the vessel capable of catching or processing herring, and they must be used exclusively as an Atlantic herring carrier vessel, and they must carry observers if required by NMFS. While operating under a valid letter of authorization or Atlantic herring carrier VMS trip declaration, such vessels are exempt from any herring possession limits associated with the herring vessel permit categories. Atlantic herring carrier vessels operating under a letter of authorization or an Atlantic herring carrier VMS trip declaration may not possess, transfer, or land any species other than Atlantic herring, except that they may possess Northeast multispecies transferred by vessels issued either an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit, consistent with the applicable possession limits for such vessels specified at § 648.86(a)(3) and (k).

* * * * *

(vi) *Open access herring permits.* A vessel that has not been issued a limited access Atlantic herring permit may obtain:

(A) An All Areas open access Atlantic herring permit to possess up to 6,600 lb (3 mt) of herring per trip from all herring management areas, limited to one landing per calendar day; and/or

(B) An Areas 2/3 open access Atlantic herring permit to possess up to 20,000 lb (9 mt) of herring per trip from Herring Management Areas 2 and 3, limited to one landing per calendar day, provided the vessel has also been issued a Limited Access Atlantic Mackerel permit, as defined at § 648.4(a)(5)(iii).

* * * * *

■ 4. In § 648.7, paragraphs (b)(2)(i), (b)(3)(i) introductory text, (b)(3)(i)(A), and (b)(3)(i)(C)(*2*) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) *Atlantic herring owners or operators issued an All Areas open access permit.* The owner or operator of a vessel issued an All Areas opn 9access permit to fish for herring must report catch (retained and discarded) of herring via an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(3) * * *

(i) *Atlantic herring owners or operators issued a limited access permit or Areas 2/3 open access permit.* The owner or operator of a vessel issued a limited access permit or Areas 2/3 open access permit to fish for herring must report catch (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr (9:00 a.m.) of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit or Areas 2/3 open access permit must submit a catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

* * * * *

(C) * * *

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel transfers catch to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

* * * * *

■ 5. In § 648.10, paragraphs (b)(8) and (c)(2)(i)(B) are revised, paragraph (c)(2)(i)(C) is removed and reserved, and paragraph (m) is added to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(8) A vessel issued a limited access herring permit (i.e., All Areas Limited Access Permit, Areas 2 and 3 Limited Access Permit, Incidental Catch Limited Access Permit), or a vessel issued an Areas 2/3 open access herring permit, or a vessel declaring an Atlantic herring carrier trip via VMS.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) For vessels fishing with a valid NE multispecies limited access permit, a valid surfclam and ocean quahog permit specified at § 648.4(a)(4), an Atlantic sea scallop limited access permit, or an Atlantic herring permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

* * * * *

(m) *Atlantic herring VMS notification requirements.* (1) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit intending to declare into the herring fishery or a vessel issued an Atlantic herring permit and intending to declare an Atlantic herring carrier trip via VMS must notify NMFS by declaring a herring trip with the appropriate gear code prior to leaving port at the start of each trip in order to harvest, possess, or land herring on that trip.

(2) A vessel issued a Limited Access Herring Permit or an Areas 2/3 Open Access Herring Permit or a vessel that declared an Atlantic herring carrier trip via VMS must notify NMFS Office of Law Enforcement through VMS of the

time and place of offloading at least 6 hr prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish. The Regional Administrator may adjust the prior notification minimum time through publication of a document in the **Federal Register** consistent with the Administrative Procedure Act.

■ 6. In § 648.11, paragraph (m) is added to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(m) *Atlantic herring observer coverage*—(1) *Pre-trip notification.* At least 48 hr prior to the beginning of any trip on which a vessel may harvest, possess, or land Atlantic herring, a vessel issued a Limited Access Herring Permit or a vessel issued an Areas 2/3 Open Access Herring Permit on a declared herring trip or a vessel issued an All Areas Open Access Herring Permit fishing with midwater trawl gear in Management Areas 1A, 1B, and/or 3, as defined in § 648.200(f)(1) and (3), and herring carriers must provide notice of the following information to NMFS: Vessel name, permit category, and permit number; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; gear type; target species; and intended area of fishing, including whether the vessel intends to engage in fishing in the Northeast Multispecies Closed Areas, Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, and Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, at any point in the trip. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 12 hr prior to vessel departure from port.

(2) When vessels issued limited access herring permits are working cooperatively in the Atlantic herring fishery, including pair trawling, purse seining, and transferring herring at-sea, each vessel must provide to observers, when requested, the estimated weight of each species brought on board and the estimated weight of each species released on each tow.

(3) *Sampling requirements.* In addition to the requirements at § 648.11(d)(1) through (7), an owner or operator of a vessel issued a Limited Access Herring Permit on which a NMFS-approved observers is embarked must provide observers:

(i) A safe sampling station adjacent to the fish deck, including: A safety harness, if footing is compromised and grating systems are high above the deck; a safe method to obtain samples; and a storage space for baskets and sampling gear.

(ii) Reasonable assistance to enable observers to carry out their duties, including but not limited to assistance with: Obtaining and sorting samples; measuring decks, codends, and holding bins; collecting bycatch when requested by the observers; and collecting and carrying baskets of fish when requested by the observers.

(iii) Advance notice when pumping will be starting; when sampling of the catch may begin; and when pumping is coming to an end.

(iv) Visual access to the net, the codend of the net, and the purse seine bunt and any of its contents after pumping has ended and before the pump is removed from the net. On trawl vessels, the codend including any remaining contents must be brought on board, unless bringing the codend on board is not possible. If bringing the codend on board is not possible, the vessel operator must ensure that the observer can see the codend and its contents as clearly as possible before releasing its contents.

(4) *Measures to address slippage.* (i) No vessel issued a limited access Atlantic herring permit and carrying a NMFS-approved observer may release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If fish are released prior to being brought on board the vessel due to any of the above exceptions, the vessel operator must complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

■ 7. In § 648.13, paragraph (f)(2)(i) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(f) * * *

(2) * * *

(i) A vessel issued an Atlantic herring permit may operate as a herring carrier vessel and receive herring provided it either is issued a carrier vessel letter of authorization and complies with the terms of that authorization, as specified in § 648.4(a)(10)(ii), or it must have been issued and have on board a herring permit and have declared an Atlantic herring carrier trip via VMS, consistent with the requirements at § 648.10(l)(1).

* * * * *

■ 8. In § 648.14, paragraphs (r)(1)(ii)(C) and (r)(1)(vii)(B) are revised; and paragraphs (r)(1)(viii)(C) and (D), and (r)(2)(viii) through (xii) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(ii) * * *

(C) Possess or land more herring than is allowed by the vessel's Atlantic herring permit or the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively, including vessels pair trawling, purse seining, or transferring herring at-sea.

* * * * *

(vii) * * *

(B) Receive Atlantic herring at sea in or from the EEZ, solely for transport, without an Atlantic herring carrier letter of authorization from the Regional Administrator or having declared an Atlantic herring carrier trip via VMS consistent with the requirements at § 648.4(a)(10)(ii).

* * * * *

(viii) * * *

(C) Fail to declare via VMS into the herring fishery by entering the appropriate herring fishery code and appropriate gear code prior to leaving port at the start of each trip to harvest, possess, or land herring, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open

Access Herring Permit or is intending to act as an Atlantic herring carrier.

(D) Fail to notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 6 hr prior to landing or, if fishing ends less than 6 hours before landing, as soon as the vessel stops catching fish, if a vessel has been issued a Limited Access Herring Permit or issued an Areas 2/3 Open Access Herring Permit or has declared an Atlantic herring carrier trip via VMS.

* * * * *

(2) * * *

(viii) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a) through (e), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(ix) Release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard, as defined in § 600.10 of this chapter, fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions defined at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a) through (e).

(x) Fail to immediately leave the Northeast Multispecies Closed Areas and complete, sign, and submit an affidavit as required by § 648.202(b)(2) and (4).

(xi) Release fish from the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard, as defined in § 600.10 of this chapter, fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions defined at defined at § 648.11(m)(4)(i).

(xii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the requirements at § 648.11(m)(4)(iii)(A).

* * * * *

■ 9. In § 648.80, paragraph (d)(7)(iii)(B) is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(7) * * *

(iii) * * *

(B) Complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the total weight of fish caught on that tow; and the weight of fish released (if less than the full tow). A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

* * * * *

■ 10. In § 648.200, paragraph (f)(4) is added and paragraph (g) is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(f) * * *

(4) *River Herring Monitoring/Avoidance Areas.*

(i) January-February River Herring Monitoring/Avoidance Areas. The January-February River Herring Monitoring/Avoidance Areas include 4 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) January-February River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 43°00′ N Lat., 71°00′ W Long.;
(*2*) 43°00′ N Lat., 70°30′ W Long;
(*3*) 42°30′ N Lat., 70°30′ W Long;
(*4*) 42°30′ N Lat., 71°00′ W Long.; and
(*5*) 43°00′ N Lat., 71°00′ W Long.

(B) January-February River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 42°00′ N Lat., 70°00′ W Long.;
(*2*) 42°00′ N Lat., 69°30′ W Long.;
(*3*) 41°30′ N Lat., 69°30′ W Long,;
(*4*) 41°30′ N Lat., 70°00′ W Long.; and
(*5*) 42°00′ N Lat., 70°00′ W Long.

(C) January-February River Herring Monitoring/Avoidance Sub-Area 3.

(*1*) 41°30′ N Lat., 72°00′ W Long.;
(*2*) 41°30′ N Lat., 71°00′ W Long.;
(*3*) 40°30′ N Lat., 71°00′ W Long.;
(*4*) 40°30′ N Lat., 72°30′ W Long.;
(*5*) The southernmost shoreline of Long Island, New York, 72°30′ W Long.;
(*6*) The north-facing shoreline of Long Island, New York, 72°00′ W Long.; and
(*7*) 41°30′ N Lat., 72°00′ W Long.
(*8*) Points 5 and 6 are connected following the coastline of the south fork of eastern Long Island, New York.

(D) January-February River Herring Monitoring/Avoidance Sub-Area 4.

(*1*) 40°30′ N Lat., 74°00′ W Long.;
(*2*) 40°30′ N Lat., 72°30′ W Long.;
(*3*) 40°00′ N Lat., 72°30′ W Long.;
(*4*) 40°00′ N Lat., 72°00′ W Long.;
(*5*) 39°30′ N Lat., 72°00′ W Long.;
(*6*) 39°30′ N Lat., 73°30′ W Long,;
(*7*) 40°00′ N Lat., 73°30′ W Long.;
(*8*) 40°00′ N Lat., 74°00′ W Long.; and
(*9*) 40°30′ N Lat., 74°00′ N Long;
(*10*) Points 8 and 9 are connected following 74°W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(ii) March-April River Herring Monitoring/Avoidance Areas. The March-April River Herring Monitoring/Avoidance Areas include 5 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) March-April River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 43°00′ N Lat., 71°00′ W Long.;
(*2*) 43°00′ N Lat., 70°30′ W Long.;
(*3*) 42°30′ N Lat., 70°30′ W Long.;
(*4*) 42°30′ N Lat., 71°00′ W Long.; and
(*5*) 43°00′ N Lat., 71°00′ W Long.

(B) March-April River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 42°00′ N Lat., 70°00′ W Long.;
(*2*) 42°00′ N Lat., 69°30′ W Long.;
(*3*) 41°30′ N Lat., 69°30′ W Long.;
(*4*) 41°30′ N Lat., 70°00′ W Long.; and
(*5*) 42°00′ N Lat., 70°00′ W Long.

(C) March-April River Herring Monitoring/Avoidance Sub-Area 3.

(*1*) 41°00′ N Lat., The easternmost shoreline of Long Island, New York;
(*2*) 41°00′ N Lat., 71°00′ W Long.;
(*3*) 40°30′ N Lat., 71°00′ W Long.;
(*4*) 40°30′ N Lat., 71°30′ W Long.;
(*5*) 40°00′ N Lat., 71°30′ W Long.;
(*6*) 40°00′ N Lat., 72°30′ W Long.;
(*7*) The southernmost shoreline of Long Island, New York, 72°30′ W Long.; and
(*8*) 41°00′ N Lat., The easternmost shoreline of Long Island, New York.
(*9*) Points 7 and 8 are connected following the southern shoreline of Long Island, New York.

(D) March-April River Herring Monitoring/Avoidance Sub-Area 4.

(*1*) 40°00′ N Lat., 73°30′ W Long.;
(*2*) 40°00′ N Lat., 72°30′ W Long.;
(*3*) 39°00′ N Lat., 72°30′ W Long.;
(*4*) 39°00′ N Lat., 73°30′ W Long.; and
(*5*) 40°00′ N Lat., 73°30′ W Long.

(E) March-April River Herring Monitoring/Avoidance Sub-Area 5.

(*1*) 40°30′ N Lat., 74°00′ W Long.;
(*2*) 40°30′ N Lat., 73°30′ W Long.;
(*3*) 40°00′ NLat., 73°30′ W Long.;
(*4*) 40°00′ N Lat., 74°00′ W Long.; and
(*5*) 40°30′ N Lat., 74°00′ W Long.
(*6*) Points 4 and 5 are connected following 74° W Long. and the easternmost shoreline of New Jersey, whichever is furthest east.

(iii) May–June River Herring Monitoring/Avoidance Areas. The May–June River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) May–June River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 44°00′ N Lat., 69°30′ W Long.;
(*2*) 44°00′ N Lat., 69°00′ W Long.;
(*3*) 43°30′ N Lat., 69°00′ W Long.;
(*4*) 43°30′ N Lat., 69°30′ W Long.; and

(*5*) 44°00′ N Lat., 69°30′ W Long.

(B) May–June River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 42°00′ N Lat., 70°00′ W Long.;

(*2*) 42°00′ N Lat., 69°30′ W Long.;

(*3*) 41°30′ N Lat., 69°30′ W Long.;

(*4*) 41°30′ N Lat., 70°00′ W Long.; and

(*5*) 42°00′ N Lat., 70°00′ W Long.

(iv) July–August River Herring Monitoring/Avoidance Areas. The July–August River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) July–August River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 44°00′ N Lat., 70°00′ W Long.;

(*2*) 44°00′ N Lat., 69°30′ W Long.;

(*3*) 43°00′ N Lat., 69°30′ W Long.;

(*4*) 43°00′ N Lat., 70°00′ W Long.; and

(*5*) 44°00′ N Lat., 70°00′ W Long.

(*6*) The boundary from Points 4 to 5 excludes the portions Maquoit and Middle Bays east of 70°00′ W Long.

(B) July–August River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 44°00′ N Lat., 69°00′ W Long.;

(*2*) 44°00′ N Lat., 68°30′ W Long.;

(*3*) 43°30′ N Lat., 68°30′ W Long.;

(*4*) 43°30′ N Lat., 69°00′ W Long.; and

(*5*) 44°00′ N Lat., 69°00′ W Long.

(v) September–October River Herring Monitoring/Avoidance Areas. The September–October River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) September–October River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 44°30′ N Lat., 68°00′ W Long.;

(*2*) 44°30′ N Lat., 67°00′ W Long.;

(*3*) 44°00′ N Lat., 67°00′ W Long.;

(*4*) 44°00′ N Lat., 68°00′ W Long.; and

(*5*) 44°30′ N Lat., 68°00′ W Long.

(B) September–October River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 43°00′ N Lat., 71°00′ W Long.;

(*2*) 43°00′ N Lat., 70°30′ W Long.;

(*3*) 42°30′ N Lat., 70°30′ W Long.;

(*4*) 42°30′ N Lat., 71°00′ W Long.; and

(*5*) 43°00′ N Lat., 71°00′ W Long.

(vi) November–December River Herring Monitoring/Avoidance Areas. The November–December River Herring Monitoring/Avoidance Areas include 2 sub-areas. Each sub-area includes the waters bounded by the coordinates below, connected in the order listed by straight lines unless otherwise noted.

(A) November–December River Herring Monitoring/Avoidance Sub-Area 1.

(*1*) 43°00′ N Lat., 71°00′ W Long.;

(*2*) 43°00′ N Lat., 70°00′ W Long.;

(*3*) 42°00′ N Lat., 70°00′ W Long.;

(*4*) 42°00′ N Lat., 69°30′ W Long.;

(*5*) 41°30′ N Lat., 69°30′ W Long.;

(*6*) 41°30′ N Lat., 70°00′ W Long.;

(*7*) The south-facing shoreline of Cape Cod, MA, 70°00′ W Long.;

(*8*) 42°00′ N Lat., The west-facing shoreline of Cape Cod, MA Long.;

(*9*) 42°00′ N Lat., 70°30′ W Long.;

(*10*) 42°30′ N Lat., 70°30′ W Long.;

(*11*) 42°30′ N Lat., 71°00′ W Long.; and

(*12*) 43°00′ N Lat., 71°00′ W Long.

(*13*) Points 7 and 8 are connected following the coastline of Cape Cod, MA.

(B) November–December River Herring Monitoring/Avoidance Sub-Area 2.

(*1*) 41°30′ N Lat., 72°00′ W Long.;

(*2*) 41°30′ N Lat., 70°00′ W Long.;

(*3*) 40°30′ N Lat., 70°00′ W Long.;

(*4*) 40°30′ N Lat., 70°30′ W Long.;

(*5*) 41°00′ N Lat., 70°30′ W Long.;

(*6*) 41°00′ N Lat., 72°00′ W Long.; and

(*7*) 41°30′ N Lat., 72°00′ W Long.

(g) All aspects of the following measures can be modified through the specifications process:

(1) AMs;

(2) Possession limits;

(3) River Herring Monitoring/Avoidance Areas; and

(4) River herring catch caps.

■ 11. In § 648.202, paragraph (b) is added to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) *Fishing in Northeast Multispecies Closed Areas.* (1) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, may fish for, possess or land fish in or from the Closed Areas, including Closed Area I, Closed Area II, Nantucket Lightship Closed Area, Cashes Ledge Closure Area, Western GOM Closure Area, as defined in § 648.81(a) through (e), respectively, unless it has declared first its intent to fish in the Closed Areas as required by § 648.11(m)(1), and is carrying onboard a NMFS-approved observer.

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(i) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(ii) A mechanical failure precludes bringing some or all of the catch on board the vessel for inspection; or,

(iii) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(3) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board.

(4) If fish are released prior to being brought aboard the vessel due to any of the above exceptions, the vessel operator must:

(i) Stop fishing and immediately exit the Closed Areas. Once the vessel has exited the Closed Areas, it may continue to fish, but may not fish inside the Closed Areas for the remainder of that trip.

(ii) Complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

■ 12. In § 648.204, paragraph (b) is revised to read as follows:

§ 648.204 Possession restrictions.

* * * * *

(b) Each vessel working cooperatively in the herring fishery, including vessels pair trawling, purse seining, and transferring herring at-sea, must be issued a valid herring permit to fish for, possess, or land Atlantic herring and are subject to the most restrictive herring possession limit associated with the permits issued to vessels working cooperatively.

■ 13. Section 648.205 is revised to read as follows:

§ 648.205 VMS requirements.

The owner or operator of any limited access herring vessel or vessel issued an Areas 2/3 Open Access Permit, with the exception of fixed gear fishermen, must install and operate a VMS unit consistent with the requirements of § 648.9. The VMS unit must be installed on board, and must be operable before the vessel may begin fishing. Atlantic herring carrier vessels are not required

to have VMS. (See § 648.10(m) for VMS notification requirements.)

■ 14. In § 648.206, paragraphs (b)(30) and (b)(31) are revised, and paragraphs (b)(32) through (37) are added to read as follows:

§ 648.206 Framework provisions.

* * * * *

(b) * * *

(30) AMs;

(31) Changes to vessel trip notification and declaration requirements;

(32) Adjustments to measures to address slippage, including sampling requirements;

(33) River Herring Monitoring/Avoidance Areas;

(34) Provisions for river herring catch avoidance program, including adjustments to the mechanism and process for tracking fleet activity, reporting catch events, compiling data, and notifying the fleet of changes to the area(s); the definition/duration of 'test tows,' if test tows would be utilized to determine the extent of river herring catch in a particular area(s); the threshold for river herring catch that would trigger the need for vessels to be alerted and move out of the area(s); the distance that vessels would be required to move from the area(s); and the time that vessels would be required to remain out of the area(s).

(35) Changes to criteria/provisions for access to Northeast Multispecies Closed Areas;

(36) River herring catch caps; and

(37) Any other measure currently included in the FMP.

* * * * *

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FEDERAL REGISTER

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Part III

The President

Proclamation 9082—20th Anniversary of Executive Order 12898 on Environmental Justice

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Presidential Documents

Title 3—

The President

Proclamation 9082 of February 10, 2014

20th Anniversary of Executive Order 12898 on Environmental Justice

By the President of the United States of America

A Proclamation

Two decades ago, President William J. Clinton directed the Federal Government to tackle a long-overlooked problem. Low-income neighborhoods, communities of color, and tribal areas disproportionately bore environmental burdens like contamination from industrial plants or landfills and indoor air pollution from poor housing conditions. These hazards worsen health disparities and reduce opportunity for residents—children who miss school due to complications of asthma, adults who struggle with medical bills. Executive Order 12898 affirmed every American's right to breathe freely, drink clean water, and live on uncontaminated land. Today, as America marks 20 years of action, we renew our commitment to environmental justice for all.

Because we all deserve the chance to live, learn, and work in healthy communities, my Administration is fighting to restore environments in our country's hardest-hit places. After over a decade of inaction, we reconvened an Environmental Justice Interagency Working Group and invited more than 100 environmental justice leaders to a White House forum. Alongside tribal governments, we are working to reduce pollution on their lands. And to build a healthier environment for every American, we established the first-ever national limits for mercury and other toxic emissions from power plants.

While the past two decades have seen great progress, much work remains. In the years to come, we will continue to work with States, tribes, and local leaders to identify, aid, and empower areas most strained by pollution. By effectively implementing environmental laws, we can improve quality of life and expand economic opportunity in overburdened communities. And recognizing these same communities may suffer disproportionately due to climate change, we must cut carbon emissions, develop more homegrown clean energy, and prepare for the impacts of a changing climate that we are already feeling across our country.

As we mark this day, we recall the activists who took on environmental challenges long before the Federal Government acknowledged their needs. We remember how Americans—young and old, on college campuses and in courtrooms, in our neighborhoods and through our places of worship—called on a Nation to pursue clean air, water, and land for all people. On this anniversary, let us move forward with the same unity, energy, and passion to live up to the promise that here in America, no matter who you are or where you come from, you can pursue your dreams in a safe and just environment.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 11, 2014, as the 20th Anniversary of Executive Order 12898 on Environmental Justice. I call upon all Americans to observe this day with programs and activities that promote environmental justice and advance a healthy, sustainable future.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of February, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

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