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12 CFR Part 325

Supervisory Guidance on Implementing Dodd-Frank Act Company-Run Stress Tests for Banking Organizations With Total Consolidated Assets of More Than $10 Billion but Less Than $50 Billion

AGENCY: Board of Governors of the Federal Reserve System (Board or Federal Reserve); Federal Deposit Insurance Corporation (FDIC); Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Final supervisory guidance.

SUMMARY: The Board, FDIC, and OCC, (collectively, the agencies) are issuing this guidance, which outlines principles for implementation of the stress tests required under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA stress tests), applicable to all bank and savings and loan holding companies, national banks, state member banks, state nonmember banks, Federal savings associations, and state-chartered savings associations with more than $10 billion but less than $50 billion in total consolidated assets (collectively, the $10–50 billion companies). The guidance discusses supervisory expectations for DFA stress test practices and offers additional details about methodologies that should be employed by these companies.

DATES: Effective dates are as follows:
For the Board: April 1, 2014.
For the FDIC: March 31, 2014.
For the OCC: March 31, 2014.

FOR FURTHER INFORMATION CONTACT:
Board: David Palmer, Senior Supervisory Financial Analyst, (202) 452–2904; Joseph Cox, Financial Analyst, (202) 452–3216; Keith Coughlin, Manager, (202) 452–2056; Benjamin McDonough, Senior Counsel, (202) 452–2036; or Christine Graham, Senior Attorney, (202) 452–3005, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.
FDIC: Ryan Sheller, Section Chief, (202) 412–4861; Alisha Riemenschneider, Senior Financial Institutions Specialist, (712) 212–3280; Mark Flanigan, Counsel, (202) 898–7427; or Jason Fincke, Senior Attorney, (202) 898–3659, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
OCC: Kari Falkenborg, Financial Analyst, (202) 649–6831; Harry Glenos, Senior Financial Advisor, (202) 649–6409; Ron Shimabukuro, Senior Counsel, or Henry Barkhausen, Attorney, Legislative and Regulatory Affairs Division, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

In October 2012, the agencies issued final rules implementing stress testing requirements for companies [1] with over $10 billion in total assets pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA stress test rules).[2] At that time, the agencies also indicated that they intended to publish supervisory guidance to accompany the final rules and assist companies in meeting rule requirements, including separate guidance for companies with between $10 billion and $50 billion in total assets. To supplement these rules, on July 30, 2013, the agencies sought public comment on proposed supervisory guidance (''proposed guidance'') that discussed supervisory expectations regarding the conduct of the DFA stress tests and offered additional details about methodologies that should be employed by these companies.[3]

The proposed guidance was organized around the DFA stress test rule requirements. In the proposed guidance, the agencies indicated that they would expect $10–50 billion companies to follow the DFA stress test rule requirements, other relevant supervisory guidance, and the expectations from the proposed guidance when conducting DFA stress tests. The final guidance is organized in a similar manner.

Consistent with the proposal, other relevant guidance includes ''Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets'' issued by the agencies in May 2012 (''May 2012 guidance'').[4] The May 2012 guidance sets forth broad principles for a satisfactory stress testing framework for banking organizations with total assets of more than $10 billion, including principles related to governance, controls, and use of results.

However, it is important to note that other guidance relevant for the $10–50 billion companies does not include, and these firms are not subject to, other requirements and expectations applicable to bank holding companies with assets of at least $50 billion, including the Federal Reserve's capital plan rule, annual Comprehensive Capital Analysis and Review, supervisory stress tests for capital adequacy, or the related data collections supporting the supervisory stress test.[5]

[1] For the OCC, the term ''company'' is used in this guidance to refer to national banks and Federal savings associations that qualify as ''covered institutions'' under the OCC Annual Stress Test Rule. 12 CFR 46.2. For the Board, the term ''company'' is used in this guidance to refer to state member banks, bank holding companies, and savings and loan holding companies. *See* 12 CFR 252.13. For the FDIC, the term ''company'' is used in this guidance to refer to insured state nonmember banks and insured state savings associations that qualify as a ''covered bank'' under the FDIC Annual Stress Test Rule. 12 CFR 325.202.

[2] *See* 77 FR 61238 (October 9, 2012) (OCC final rule), 77 FR 62378 (October 12, 2012) (Board final rule), and 77 FR 62417 (October 15, 2012) (FDIC final rule).

[3] *See* 78 FR 47217 (August 5, 2013).

[4] *See* 77 **Federal Register** 29458 (May 17, 2012).

[5] *See* 12 CFR 225.8 (capital plan rule); Supervisory and Company-Run Stress Test Requirements for Covered Companies, 12 CFR part 252, subparts E and F; and the Capital Assessment

Continued

II. Summary of Comments

The agencies received 13 comments on the guidance from trade organizations, industry participants, vendors, and individuals. In addition to the comments, the agencies held a series of discussions with trade groups, state banking supervisors, and the banking organizations to raise awareness about the proposed guidance and solicit feedback. Some commenters expressed support for the proposed guidance. However, several commenters recommended changes to, or clarification of, certain provisions of the proposed guidance, as discussed below. In response to these comments, the agencies have clarified the principles set forth in the guidance and modified the proposed guidance in certain respects as described in this section of the **SUPPLEMENTARY INFORMATION.**

A. Overall Comments on the Proposed Guidance

Commenters provided several suggestions for clarifying or modifying the proposed guidance. Commenters requested additional clarity around what practices are commensurate with a company's size and complexity and what constitutes a larger or more sophisticated company. Some commenters requested that the agencies provide additional tailoring of expectations based on the size and complexity of companies, and on each company's familiarity with stress testing. Other commenters argued that the guidance adopted an approach that was too prescriptive and should provide each company with flexibility to focus its stress test on the company's assessment of its idiosyncratic risks. Commenters also recommended that the agencies consider requiring other types of stress testing besides scenario analysis and that a more comprehensive set of risks should be addressed in the guidance.

The final guidance retains the overall structure and content of the proposal. In addition, the final guidance provides additional detail about certain key requirements already established in the DFA stress testing rules. The proposed guidance emphasized that the expectations regarding stress testing for $10–50 billion companies would generally be reduced compared to expectations for companies with $50 billion or more in assets. In order to underscore that point, the final guidance provides additional examples of certain tailored expectations for $10–50 billion companies. In addition, the final guidance provides information on the circumstances under which a $10–50 billion company should use the more advanced practices described in the guidance.

Several commenters opposed stress testing for $10–50 billion companies. The commenters argued that conducting the stress tests would be expensive, time-consuming, and of limited benefit. One commenter suggested that the stress tests would distract key personnel from conducting other types of risk management. Commenters requested that $10–50 billion companies be exempt from stress testing requirements under certain circumstances, such as if the company was well capitalized, or be allowed to use an alternative simplified stress test, such as assuming certain loss rates or conducting a local market and concentration analysis.

Stress testing for companies with more than $10 billion but less than $50 billion in total consolidated assets is a requirement of the Dodd-Frank Act. The agencies are not exempting a company based on its pre-stress capital ratios or allowing companies to conduct a simplified stress test that is not based on the supervisory scenarios provided by each agency, as those practices may not address the possibility of losses under stressful circumstances. However, as noted above, the agencies have sought to tailor the stress testing requirements and expectations for $10–50 billion companies. For example, the expectations for data sources, data segmentation, sophistication of estimation practices approaches, reporting and public disclosure are elevated for larger and more complex organizations than for $10–50 billion companies.

Commenters requested that the agencies modify the timing of the stress tests to reduce the regulatory reports that need to be completed at or shortly after year-end. Commenters noted that companies were required to file many other regulatory reports at the end of a year and that other regulatory changes are implemented at the beginning of a year. One commenter's request was to allow companies to conduct their stress tests with an as of date of December 31 and a due date of June 30. The agencies note that the DFA stress test rules do not require $10–50 billion companies to file regulatory reports by year-end. Compared to larger banking organizations, the DFA stress test rules for $10–50 billion companies provide these companies with additional time to conduct their stress tests each year, with the report due by March 31, rather than the reporting deadline of January 5 that is required for companies with $50 billion or more in assets. The agencies recognize that some companies may still face resource constraints based on the timeline of the annual stress tests, but the timeline was codified in the DFA stress test rules. Thus, modification of that timeline is outside of the scope of the final guidance.

Some commenters were appreciative of the agencies' communication regarding the guidance and one commenter requested that the agencies set up a dedicated electronic mailbox for companies to use to submit questions to the agencies about the stress tests. The agencies recognize that additional clarification about the stress tests may be necessary and are evaluating additional tools to assist in this regard. In the meantime, companies should direct questions regarding the guidance to their examination staff or to the contacts identified in the guidance.

B. Scenarios for DFA Stress Tests

Under the stress test rules required by the Dodd-Frank Act, $10–50 billion companies must assess the potential impact of a minimum of three macroeconomic scenarios—baseline, adverse, and severely adverse—on their consolidated losses, revenues, balance sheet (including risk-weighted assets), and capital. The proposed guidance indicated that $10–50 billion companies should apply each supervisory scenario across all business lines and risk areas so that they can assess the effect of a common scenario on the entire enterprise, though the effect of the given scenario on different business lines and risk areas may vary.

Some commenters opposed requiring $10–50 billion companies to use the supervisory scenarios in their DFA stress tests, arguing that the national variables would not be useful or relevant for many companies, that the agencies do not have a strong record of identifying emerging risks in the past, and that the scenario variables were not sufficiently plausible to be useful as a risk management tool. Other commenters argued that translating scenario variables into projections of losses, revenues, the balance sheet, risk-weighted assets, and capital would be time-consuming, complicated, and without sufficient benefit to justify the cost. The commenters stated that $10–50 billion companies do not have the staff or expertise to perform the quantitative analysis necessary to properly translate the scenarios in the stress tests.

The use of common supervisory scenarios by all companies subject to annual company-run stress tests is a key feature of the stress test rules required

and Stress Testing information collection (FR Y–14Q, FR Y–14M, and FR Y–14A).

by the Dodd-Frank Act. However, the proposed guidance indicated that $10–50 billion companies are not required to use all of the variables in the supervisory scenarios. In addition, the proposed guidance stated that $10–50 billion companies could, but would not be required to, include additional variables or additional quarters to improve the robustness of their company-run stress tests. However, the proposed guidance indicated that the paths of any additional regional or local variables that a company used would be expected to be consistent with the path of the national variables in the supervisory scenarios. The agencies believe that the final guidance allows for substantial flexibility in translating scenario variables and are retaining these principles. Thus, consistent with the final guidance, a company is not required to use all the variables in the supervisory scenarios but could use additional variables or quarters to improve their company-run stress tests.

Commenters requested further clarification regarding the translation of the supervisory scenarios into projections of losses and revenues. One commenter questioned whether idiosyncratic risks should be addressed in relation to the supervisory scenarios or through the use of alternative scenarios that might not be consistent with the supervisory scenarios. Consistent with principles articulated in the May 2012 stress testing guidance, the final guidance reiterates that no single stress test can accurately estimate the effect of all stressful events and circumstances. Accordingly, the final guidance clarifies that while additional variables may be used to better link the scenario variables in the supervisory scenarios with companies' projections, the DFA stress tests may not capture the effects of all of a company's risks and vulnerabilities.

The agencies received several comments regarding the translation of national variables in the supervisory scenarios to regional variables. Commenters requested additional flexibility in the use of regional variables and in projecting regional variables in cases where data on local conditions may be less readily available. Commenters suggested that $10–50 billion companies will have to rely on vendors for intermediate variables as they lack the expertise to create those variables internally. For these reasons, some commenters suggested that the agencies assist companies in developing regional variables, either by directly providing local variables or by approving of specific third-party provided variables or specific vendors who provide scenario variables.

The agencies believe that the guidance provides sufficient flexibility regarding the use of regional variables. The guidance does not require a $10–50 billion company to project regional variables, and to the extent that a $10–50 billion company decides to project one or more regional variables, the guidance simply provides that the paths of the regional variables should be consistent with the paths of the national variables. For example, it would be inappropriate to use a regional or local variable that exhibited limited stress compared to variables in the macroeconomic scenarios provided by the agencies because the approach for deriving that additional variable would be based on relatively benign conditions. The agencies do not currently plan to include regional variables in the supervisory scenarios as it would be difficult to provide a single set of regional variables that would be appropriate and stressful for every company subject to DFA stress tests. The agencies do not supervise third-party vendors or consultants and do not endorse any vendor products, including those relating to scenario variables for use in the DFA stress tests. The final guidance retains the expectation that each company should ensure that they understand any vendor-supplied variables they use and confirm that such variables are relevant for and relate to company-specific characteristics.

C. Data Sources and Segmentation

The proposed guidance indicated that if a company does not currently have sufficient internal data to conduct a stress test, it would be permitted to use an alternative data source as a proxy for its own risk profile and exposures. However, the proposed guidance noted that companies with limited data would be expected to develop strategies to accumulate sufficient data to improve their stress test estimation processes over time.

While one commenter appreciated the proposed guidance's caution regarding the use of historical data, several commenters requested further clarification on expectations for data sources. Commenters believed that compiling internal historical data would be cost prohibitive and suggested that companies should be able to make reasonable assumptions to address limitations of the history or applicability of data. Other commenters requested that the agencies specify what factors are most relevant to determining whether proxy data are appropriate and another commenter requested that the agencies specifically instruct companies about which historical periods from which to collect data. Other commenters requested that the agencies clarify the expected timeline for improving the quality of internal data and circumstances where use of proxy data would be appropriate on a continuing basis.

Developing high-quality internal data is a crucial project for improving a company's stress testing estimation practices. However, in response to comments, the final guidance states that in some cases where a company may initially lack internal data on certain portfolios it may need to rely on proxy data for some time. Such practices may be acceptable provided that the company demonstrates that proxy data are relevant to the company's own exposures and appropriate for the estimation being conducted, and that the company is actively collecting internal data.

D. Model Risk Management

The proposed guidance indicated that companies should have in place effective model risk management practices, including validation, for all models used in DFA stress tests, consistent with existing supervisory guidance.[6] Commenters requested additional guidance on the use of benchmarking and challenger models and on whether models needed to be validated before the stress test results are submitted to the agencies.

In response, the agencies have clarified that, consistent with existing supervisory guidance on model risk management, in some cases, companies may not be able to validate all the models used in their DFA stress tests prior to submission. The final guidance indicates that the use of such models may be appropriate provided that companies made an effort to identify and prioritize validation for models based on materiality and highest risk; applied compensating controls so that the output from models that have not been validated or have only been partially validated is not treated the same as the output from fully validated models; and documented clearly such cases and made them transparent in reports to model users, senior management, and other relevant parties. The final guidance also notes that companies should have timelines with explicit plans for conducting the remaining areas of validation for such

[6] ''Supervisory Guidance on Model Risk Management,'' OCC 2011–12 and ''Guidance on Model Risk Management,'' Federal Reserve SR letter 11–7.

models and recognize that any provisional use of models without validation is temporary. Furthermore, the final guidance does not contain any expectations regarding the use of challenger or benchmarking models.

The proposed guidance indicated that companies should ensure that their model risk management policies and practices generally apply to the use of vendor and third-party products as well. While some commenters stated that the expectations regarding the use of vendor models from the proposed guidance seemed fairly straightforward, other commenters requested modifications. One suggestion was that the agencies encourage companies to take ownership of stress tests rather than relying on vendors. One commenter suggested that $10–50 billion companies be provided discretion to select and utilize vendor products and services as long as the companies, with the help of the vendors, conduct their stress tests in accordance with the rules and supervisory guidance.

Other commenters requested clarification on the validation of vendor models. Some noted that it would be burdensome to require independent parties to validate vendor models and duplicative for each company to independently validate models from the same vendor. The commenters requested that the agencies evaluate and approve the use of certain products and services from vendors that meet stress testing guidelines. Alternatively, commenters suggested the agencies should put out specific guidelines for vendors to follow and allow a company to rely on vendor certification that it follows these guidelines.

Regarding vendor models, similar to the existing supervisory guidance on model risk management, the final guidance does not indicate whether $10–50 billion companies should or should not use vendor models and does not prescribe which vendors should be used. The guidance does indicate that existing supervisory guidance provides guidelines for companies regarding model risk management for vendors, and states that vendor models should be validated in a manner similar to internal models. Because model risk management, including validation of vendor models, is the responsibility of individual companies, it would not be appropriate for the agencies to provide the specific assistance suggested by commenters, such as vetting vendors. Consistent with their past practice, the agencies plan to use the normal supervisory process to work with individual companies regarding expectations for appropriate model risk management for vendor products and services.

E. Loss Estimation

The proposed guidance clarified that credit losses associated with loan portfolios and securities holdings should be estimated directly and separately, whereas other types of losses should be incorporated into estimated pre-provision net revenue (''PPNR''). The proposed guidance stated that larger or more sophisticated companies should consider more advanced loss estimation practices that identify the key drivers of losses for a given portfolio, segment, or loan; determine how those drivers would be affected in supervisory scenarios; and estimate resulting losses. Loss estimation practices should be commensurate with the materiality of the risks measured and well supported by sound, empirical analysis.

Commenters requested that the agencies provide additional information about credit loss estimation, as this is by far the most material risk to $10–50 billion companies. Some commenters suggested that the agencies provide explicit instructions for how to calculate loan losses under the stress tests. The final guidance retains the substantial flexibility regarding loss estimation practices, including for credit losses, provided in the proposed guidance. Notwithstanding some commenters' request for additional specificity, the agencies believe it is important for the guidance to provide this flexibility in light of evolving loss estimation techniques and the different levels of complexity at different companies.

Another commenter requested clarification regarding when it would be appropriate to use the simpler estimation approaches described in the guidance, especially because in some cases simpler approaches may be superior or more robust than sophisticated quantitative approaches for estimating loan losses. Similarly, one commenter requested that the agencies state that they did not have a preference for bottom-up stress testing for $10–50 billion companies. The final guidance provides some additional information on when a $10–50 billion company should use the more advanced practices described in the guidance. For example, the final guidance notes that each company's loss estimation practices should be commensurate with the materiality of the risks measured and that $10–50 billion companies should consider using more than just the minimum expectations for the exposures and activities that present the highest risk. However, the final guidance does not categorically preclude any specific estimation approach, including bottom-up stress testing.

The proposed guidance stated that companies could use different processes for the baseline scenario than for the adverse and severely adverse scenarios in order to better capture the loss potential under stressful conditions, including using their budgeting process if it was conditioned on the supervisory scenario. While some commenters supported the potential use of the budgeting process for projections under the baseline scenario, one commenter noted that companies will be challenged to use their internal budgeting processes if the internal process must be conditioned on the supervisory baseline scenario. The use of scenarios provided by each agency is a requirement of the Dodd-Frank Act that was codified in the DFA stress test rules. While a company may use its budgeting process for the DFA stress tests conducted under the baseline scenario, provided that the company can link the budgeting process to the supervisory baseline scenario, companies are not required or expected to use the supervisory baseline scenario for any of their budgeting processes.

F. Pre-Provision Net Revenue Estimation

With respect to PPNR, commenters requested that $10–50 billion companies be allowed to focus on projecting net-interest margin rather than on projecting expenses or revenue from fees unless there were material risks uncovered as part of the stress tests. The proposed guidance indicated that in some cases it may be appropriate for companies to use simpler approaches for projecting PPNR. For example, companies could project each of three main components of PPNR (net interest income, non-interest income, and non-interest expense) on an aggregate level for the entire company or by business line based on internal or industry historical experience. The agencies agree that net-interest margin is an important component of projecting PPNR and that, where fees are not a material source of revenue, a company would not be expected to use the same level of sophistication in estimating fee income as it used in estimating the company's net interest margin.

Some commenters requested additional information about the expectations for addressing operational risk in the stress tests. One commenter noted that operational risk is central to managing the key risks to banking organizations because operational risk directly affects the implementation of a business model, and its execution affects market, liquidity, and credit risk.

However, the commenter argued it would be a mistake to apply credit risk models to strategic or operational risk modeling. Another commenter noted that a company's operational risk may not be directly related to the scenarios, and requested additional clarification about estimating operational risk losses in DFA stress testing.

The proposed guidance did not prescribe the use of any specific type of operational risk modeling and indicated that losses from operational risk events would need to be estimated only if such events are related to the supervisory scenarios provided, or if there are pending related issues, such as ongoing litigation, that could affect losses or revenues over the planning horizon. The final guidance follows a similar approach and clarifies there may be certain aspects of operational risk that a company is not required to address in its DFA stress tests; however, the company should consider those other aspects of operational risk as part of broader stress testing described in the May 2012 stress testing guidance.

G. Balance Sheet and Risk-Weighted Assets

Under the proposed guidance, a company would have been expected to ensure that projected balance sheet and risk-weighted assets remain consistent with regulatory and accounting changes, are applied consistently across the company, and are consistent with the scenario and the company's past history of managing through different business environments. The guidance noted that in certain cases, it may be appropriate for a company to use simpler approaches for balance sheet and risk-weighted asset projections, such as a constant portfolio assumption.

One commenter asked for examples of circumstances where it would be appropriate to assume a constant portfolio. In response, the final guidance states that $10–50 billion companies may be able to use an assumption of a static balance sheet and static risk-weighted assets over the planning horizon; however, companies should consider whether such an approach is appropriate if the company has more volatile balance sheets and risk-weighted assets, such as from mergers and acquisitions or internal growth. In addition, the final guidance clarifies that cases in which balance sheet and risk-weighted asset projections decline over the planning horizon, and thus positively affect capital ratios, should be very well supported by analysis and documentation.

H. Projections for Quarterly Provisions and Ending Allowance for Loan and Lease Losses (ALLL)

The proposed guidance stated that companies are expected to maintain an adequate loan-loss reserve through the planning horizon, consistent with supervisory guidance, accounting standards, and a company's internal practice. The proposed guidance noted that the ALLL at the end of the planning horizon should be consistent with generally accepted accounting principles (GAAP), including any losses projected beyond the nine-quarter horizon.

While some commenters said that the guidance was clear on projecting ALLL, other commenters requested that the agencies clarify expectations regarding consistency between projections of the ALLL and GAAP. One commenter argued that determining the credit impairment of a loan in accordance with GAAP required loan-level examination of credit quality. Another commenter requested that the agencies clarify the interaction between the supervisory scenarios and GAAP requirements for the appropriate level of the ALLL.

In response to comments, the final guidance clarifies that, because loss projections for the stress tests can in some cases be conducted at a portfolio level, the ALLL projections may also be conducted at a similar level, provided that they are not inconsistent with the company's existing methodologies to calculate ALLL for other regulatory purposes and for current financial statements. The key supervisory expectation in this regard is that management ensures that the company's projected ALLL is sufficient to cover remaining loan losses under the scenario for each quarter of the planning horizon, including the last quarter.

I. Estimating the Potential Impact on Regulatory Capital Levels and Capital Ratios

The proposed guidance stated that projected capital levels and ratios should reflect applicable regulations and accounting standards for each quarter of the planning horizon. In particular, the proposed guidance noted that, in July 2013, the Board and the OCC issued a final rule and the FDIC issued an interim final rule regarding regulatory capital requirements for banking organizations (revised capital framework). Except for the stress testing cycle that began on October 1, 2013, $10–50 billion companies must measure their regulatory capital levels and regulatory capital ratios for each quarter of the planning horizon in accordance with the rules that would be in effect during that quarter, including the transition arrangements set forth in the revised capital framework.[7]

The proposed guidance indicated an expectation that post-stress capital ratios under the adverse and severely adverse scenarios will be lower than under the baseline scenario. Commenters believed that expecting capital to be lower under stress scenarios may not be appropriate for $10–50 billion companies. Commenters argued that other factors, such as slower originations, higher paydowns, and accelerated charge-offs could result in improved credit quality and higher capital ratios in the adverse and severely adverse scenarios. Another commenter noted that it was difficult to get scenario-based forecasts of asset balances to match up with circumstances that lead to declining ratios and requested additional information about assumptions that would necessarily lead to lower capital ratios in stressful conditions than in baseline scenarios.

While there could be rare cases in which capital ratios are higher under the adverse and severely adverse scenarios, any such case should be very well supported by a $10–50 billion company with analysis and documentation. Since the stress tests are intended to assess the hypothetical negative impact on companies' capital positions from stressful conditions, the agencies generally expect companies' post-stress capital ratios under the adverse and severely adverse scenarios to be lower than under the baseline scenario.

One commenter requested clarification regarding what constitutes a reasonable and conservative management response. Another commenter suggested that dynamic hedging should not be anticipated as a risk-mitigation technique under stress scenarios. In response, the agencies note that companies should make conservative assumptions about management responses in the stress tests, and should include only those responses for which there is substantial support. Any assumptions that materially mitigate losses should be well justified. For example, as discussed

[7] Each of the agencies is providing a one-year transition period for the vast majority of $10–50 billion companies where the companies would not be required to reflect the revised regulatory capital framework in their DFA stress tests. For the stress test cycle that began on October 1, 2013, $10–50 billion companies should calculate their regulatory capital ratios using the regulatory capital framework in effect as of September 30, 2013. *See* 12 CFR 252.12(n) (Board); 12 CFR 46.6 (OCC); 12 CFR 325.205 (FDIC).

in the proposed guidance, projecting changes in balances that mitigate losses are expected to also reduce revenues.

The proposed guidance noted that while holding companies are required to use specified capital action assumptions, there are no specified capital actions for banks and thrifts. The proposed guidance indicated that a bank or thrift should use capital actions that are consistent with the scenarios and the company's internal practices in their DFA stress tests. Additionally, the proposed guidance noted that holding companies should consider that the Board's DFA stress test rules require the use of certain capital assumptions in the DFA stress tests, which may not be the same as the assumptions used by the holding company's subsidiary depository institutions.

The agencies recognize that the consistency between the capital action assumptions at the holding company level and at the subsidiary depository institution level is a complicated aspect of the DFA stress test requirements. The key supervisory expectation is that if the stress test submissions for the bank or thrift and its holding company differ in terms of projected capital actions as a result of the different requirements of the DFA stress test rules, the companies should address such differences in the narrative portion of their submissions to their primary regulators and the Board. For example, if a bank assumed that it would curtail dividends to a bank holding company, the bank holding company should discuss how it would fund any capital distributions in a stressed environment.

Some commenters appreciated the flexibility that the guidance affords regarding capital actions in stress tests. However, others stated that the capital action assumptions at the holding company level are unrealistic. One commenter noted that while the capital action differences are clearly articulated, there was no guidance on how to reconcile those differences. Another commenter requested additional flexibility for holding company capital actions as that would enhance the usefulness of the stress tests as a business planning tool and make it more actionable. In response, the agencies note that the capital action assumptions specified for holding companies are a requirement of the Board's DFA stress test rules and that modifying those assumptions is outside of the scope of this guidance.

J. Controls, Oversight, and Documentation

The proposed guidance indicated that, as required by the DFA stress test rules, a company's policies and procedures for DFA stress tests should be comprehensive, ensure a consistent and repeatable process, and provide transparency regarding a company's stress testing processes and practices for third parties. In addition, the guidance provided additional detail on responsibilities for senior management and boards of directors relating to the DFA stress test. Commenters requested that the agencies modify the guidance to further embed risk oversight and management into daily business decisions and activities. One commenter suggested that companies should be able to reconcile how final outcomes compare to expected outcomes.

Certain requirements for controls and oversight are codified in the DFA stress test rules. Moreover, the agencies believe that the expectations in the final guidance are appropriate and sufficient, and to a large degree, are already contained in the May 2012 stress testing guidance. Specifically, there is no need for additional guidance on controls and oversight, including on reconciling final and expected outcomes of the stress tests, since the proposed guidance, as well as related guidance, indicated the importance of evaluating stress test outcomes and the practices that produce those outcomes.

Some commenters requested that the agencies clarify their expectations for the boards of directors. Specific clarification was requested on the level of detail that the senior management should report to the board of directors regarding methodologies used in the stress tests. Another commenter suggested it was inappropriate for a board to review and approve the stress testing framework and policies. One suggestion was that the agencies hold training programs for boards that reflect stress testing obligations. Another requested that the agencies communicate to the board of directors the relative importance of the DFA stress tests as a supervisory matter. Another commenter stated that there were too many requirements for boards and that the stress testing requirements would be burdensome.

Certain requirements for boards of directors are codified in the DFA stress test final rules. These requirements will help ensure that boards of directors provide proper oversight of DFA stress tests, thereby enhancing the tests' integrity and credibility. The agencies believe that the proposed guidance and the May 2012 stress testing guidance sufficiently convey the expectations for boards of directors, by indicating that they should play an oversight role and be advised and educated about key stress testing information, but they do not need to be intimately involved in every detail of the stress testing process. For example, the proposed guidance noted that boards should receive ''summary information'' and allowed boards to have designees to evaluate such information. In addition, the proposed guidance articulated the different expectations for boards of directors versus the expectations for senior management, with the expectation that senior management should be more involved in the details of the company's stress testing activities. These expectations have been retained in the final guidance.

The proposed guidance indicated that a $10–50 billion company would be expected to ensure that its post-stress capital results are aligned with its internal capital goals and risk appetite. For cases in which post-stress capital results were not aligned with a company's internal capital goals, senior management would be expected to provide options that senior management and the board would consider to bring them into alignment. One commenter suggested that management should not be required to create action plans to enhance the level and composition of capital in response to stress tests, and that stress tests are just one of many relevant factors for evaluating capital adequacy.

The agencies' stress test rules do not require $10–50 billion companies to create capital action plans; furthermore, the DFA stress test rules do not require companies to submit a capital plan to the agencies. The agencies have existing supervisory expectations for $10–50 billion companies regarding appropriate capital planning practices that incorporate new information about their capital positions, including from capital stress tests. However, $10–50 billion companies are not subject to the Board's capital plan rule, which includes specific capital planning and assessment requirements beyond those specified in the DFA stress test rules. In addition, the agencies' DFA stress test rules do not require $10–50 billion companies to meet or maintain any specific post-stress capital ratios or targets. However, the final guidance does retain the expectation that companies determine whether their post-stress results are aligned with their own internal capital goals. The final guidance also retains the expectation that in cases in which post-stress capital results are not aligned with a company's internal capital goals, the company should provide options it would consider to bring them into alignment.

K. Report to Supervisors and Public Disclosure of Stress Test Results

The proposed guidance indicated that companies must report the results of their DFA company-run stress tests on the $10–50 billion reporting form.[8] One commenter requested clarification on whether a company must submit two reports even if the subsidiary bank or thrift is 98 percent of the holding company. Under the stress test rules required by the Dodd-Frank Act, all companies subject to DFA stress testing, including holding companies and subsidiary banks and thrifts, must conduct stress tests and report information to the agencies. If the holding company's assets are substantially held in the subsidiary bank or thrift the agencies expect that the report will not be significantly different at the bank and at the holding company. In addition, the agencies note that they closely coordinated on the creation of the $10–50 billion reporting form and it is generally identical for all $10–50 billion companies.

Regarding public disclosure, the proposed guidance stated that $10–50 billion companies would need to follow the requirements of the stress test rules required by the Dodd-Frank Act. One commenter expressed concern that the public disclosure of the stress tests could provide fodder for short sellers and requested that the agencies explain the hypothetical nature of the stress test results to the public. The agencies recognize the sensitive nature of public disclosure of stress testing results and have designed the disclosure requirements to reflect that sensitivity—for example, public disclosure is only required for stress tests conducted under the severely adverse scenario. However, public disclosure of the results of the stress tests is a requirement of the Dodd-Frank Act. The agencies have sought to tailor the disclosure requirement for $10–50 billion companies both in the stress testing rules required under the Dodd Frank Act and through the expectations in this guidance. The agencies have frequently communicated the hypothetical nature of the stress tests, but, in response to the commenter request, the agencies have added that clarification to the final guidance.

[8] For purposes of this guidance, the term ''$10–50 billion reporting form'' refers to the relevant reporting form a $10–50 billion company will use to report the results of its DFA stress tests to its primary Federal financial regulatory agency.

L. Stress Testing at Savings and Loan Holding Companies (SLHCs)

The agencies received several comments regarding the application of the guidance to SLHCs. Commenters generally stated that the guidance did not reflect the unique concerns of SLHCs that are substantially engaged in either insurance underwriting or commercial activities and requested further tailoring of the supervisory expectations for conducting DFA stress tests at nonbank SLHCs. Commenters noted the fundamental differences in the nonbank business and insurance risk and the banking risks in the proposed guidance. For these reasons, the commenters requested delaying the implementation for excluded SLHCs, tailoring expectations for SLHCs with substantial nonbank businesses, and providing a general exemption from stress testing for SLHCs with thrift subsidiaries with less than $10 billion in assets.

The Board's rules implementing the Dodd-Frank Act stress tests provide that an SLHC that meets the asset threshold on or before the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of that subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date. On July 2, 2013, the Board approved a final rule that would implement regulatory capital requirements for SLHCs, other than those that are substantially engaged in insurance underwriting or commercial activities. As discussed in the preamble to that rule, the Board excluded SLHCs that are substantially engaged in insurance underwriting or commercial activities in order to consider further development of appropriate capital requirements of these companies, and is exploring further whether and how the proposed rule should be modified for these companies in a manner consistent with section 171 of the Dodd-Frank Act and safety and soundness expectations. That preamble indicated that the Board expects to implement a framework for SLHCs that are not subject to the final rule by the time covered SLHCs must comply with the final rule in 2015.

SLHCs that are substantially engaged in insurance underwriting or commercial activities will become subject to DFA stress testing in the stress test cycle that commences in the calendar year after the year in which those companies become subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date. As such, the Board does not anticipate that supervisors will assess the extent to which SLHCs that are substantially engaged in insurance underwriting and commercial activities are meeting the expectations in this guidance until such SLHCs are subject to the requirements of the stress test rules required under the Dodd-Frank Act. The Board may further tailor the application of DFA stress testing as it implements the stress test requirements for these SLHCs.

III. Administrative Law Matters

A. Paperwork Reduction Act Analysis

This guidance references currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) provided for in the DFA stress test rules.[9] This guidance does not introduce any new collections of information nor does it substantively modify the collections of information that the Office of Management and Budget (OMB) has approved. Therefore, no Paperwork Reduction Act submissions to OMB are required.

B. Regulatory Flexibility Act Analysis

Board:

While the guidance is not being adopted as a rule, the Board has considered the potential impact of the guidance on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the guidance will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a regulatory flexibility analysis.

For the reason discussed in the **SUPPLEMENTARY INFORMATION** above, the Board is issuing this guidance to provide additional details regarding the supervisory expectations for the DFA stress tests conducted by $10–50 billion companies. Under regulations issued by the Small Business Administration (SBA), a small entity includes a depository institution, bank holding company, or SLHCs with total assets of $500 million or less (a small banking organization).[10] The guidance would apply to companies supervised by the agencies with more than $10 billion but

[9] *See* OMB Control Nos. 1557–0311 and 1557–0312 (OCC); 3064–0186 and 3064–0187 (FDIC); and 7100–0348 and 7100–0350 (Board).

[10] Effective July 22, 2013, the SBA revised the size standards for small banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

less than $50 billion in total consolidated assets, including state member banks, bank holding companies, and SLHCs. Companies that would be subject to the guidance therefore substantially exceed the $500 million total asset threshold at which a company is considered a small company under SBA regulations. In light of the foregoing, the Board does not believe that the guidance would have a significant economic impact on a substantial number of small entities.

IV. Supervisory Guidance

The text of the supervisory guidance is as follows:

Office of the Comptroller of the Currency
Federal Reserve System
Federal Deposit Insurance Corporation

Supervisory Guidance on Implementing Dodd-Frank Act Company-Run Stress Tests for Banking Organizations With Total Consolidated Assets of More Than $10 Billion but Less Than $50 Billion

I. Introduction

In October 2012, the U.S. Federal banking agencies (''agencies'') issued the Dodd-Frank Act stress test rules [1] requiring companies with total consolidated assets of more than $10 billion to conduct annual company-run stress tests pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''DFA'').[2] This guidance outlines key supervisory expectations for companies with total consolidated assets of more than $10 billion but less than $50 billion that are required to conduct DFA stress tests (collectively ''companies'' or ''$10–50 billion companies'').[3] As discussed further below, it builds upon the interagency stress testing guidance issued in May 2012 for companies with more than $10 billion in total consolidated assets (''May 2012 stress testing guidance''), that set forth general principles for a satisfactory stress testing framework.[4]

The supervisory expectations described in this guidance are tailored to the $10–50 billion companies, similar to the manner in which the requirements in the stress test rules required under the Dodd-Frank Act were tailored for this set of companies.[5] The additional information provided in this guidance should assist companies in complying with the stress test rules required under the Dodd-Frank Act and conducting DFA stress tests that are appropriate for their risk profile, size, complexity, business mix, and market footprint. The DFA stress test rules allow flexibility to accommodate different practices across organizations, for example by not specifying specific methodological practices. Consistent with this approach, this guidance sets general supervisory expectations for stress tests, and provides, where appropriate, some examples of possible practices that would be consistent with those expectations.[6]

This guidance does not represent a comprehensive list of potential practices, and companies are not required to use any specific methodological practices for their stress tests. Companies may use various practices to project their losses, revenues, and capital that are appropriate for their risk profile, size, complexity, business mix, market footprint and the materiality of a given portfolio.

II. Background

Stress tests are an important part of a company's risk management practices, and the agencies have previously highlighted that importance as a means for companies to better understand the range of potential risks facing them. Specifically, the May 2012 stress testing guidance sets forth the following five principles for an effective stress testing regime:

1. A company's stress testing framework should include activities and exercises that are tailored to and sufficiently capture the company's exposures, activities, and risks;
2. An effective stress testing framework should employ multiple conceptually sound stress testing activities and approaches;
3. An effective stress testing framework should be forward-looking and flexible;
4. Stress test results should be clear, actionable, well supported, and inform decision-making; and
5. A company's stress testing framework should include strong governance and effective internal controls.

This DFA stress test guidance builds upon the May 2012 stress testing guidance, sets forth the supervisory expectations regarding each requirement of the DFA stress test rules, and provides illustrative examples of satisfactory practices. The guidance indicates where different requirements apply to banks, thrifts, and holding companies. The guidance is structured as follows:

A. DFA Stress Test Timelines
B. Scenarios for DFA Stress Tests
C. DFA Stress Test Methodologies and Practices
D. Estimating the Potential Impact on Regulatory Capital Levels and Capital Ratios
E. Controls, Oversight, and Documentation
F. Report to Supervisors, and
G. Public Disclosure of DFA Stress Tests

The agencies expect that the annual company-run stress tests required by the Dodd-Frank Act and the agencies' stress test rules will be one component of the broader stress testing activities conducted by $10–50 billion companies. Notably, the DFA stress tests produce projections of hypothetical results and are not intended to be forecasts of expected or most likely outcomes. The DFA stress tests may not necessarily capture a company's full range of risks, exposures, activities, and vulnerabilities that have a potential effect on capital adequacy. For example, DFA stress tests may not account for regional

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[1] *See* 77 FR 61238 (October 9, 2012) (OCC), 77 FR 62396 (October 12, 2012) (Board: Annual Company-Run Stress Test Requirements for Banking Organizations with Total Consolidated Assets over $10 Billion Other than Covered Companies), and 77 FR 62417 (October 15, 2012) (FDIC).

[2] Public Law 111–203, 124 Stat. 1376 (2010). Each entity that meets the applicability criteria must conduct a separate stress test and provide a separate submission. For example, both a bank holding company between $10–50 billion in assets and its subsidiary bank with between $10–50 billion in assets must conduct a separate stress test; however, if a subsidiary bank of a $10–50 billion bank holding company has $10 billion or less in assets then it does not need to conduct a DFA stress test.

[3] For the OCC, the term ''company'' is used in this guidance to refer to a banking organization that qualifies as a ''covered institution'' under the OCC Annual Stress Test Rule. 12 CFR 46.2. For the Board, the term ''company'' is used in this guidance to refer to state member banks, bank holding companies, and savings and loan holding companies. 12 CFR 252.13. For the FDIC, the term ''company'' is used in this guidance to refer to insured state nonmember banks and insured state savings associations that qualify as a ''covered bank'' under the FDIC Annual Stress Test Rule. 12 CFR 325.202.

[4] *See* 77 FR 29458, ''Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets,'' (May 17, 2012).

[5] For example, expectations for data sources, data segmentation, sophistication of estimation practices, reports and public disclosure are generally reduced compared to the expectations for larger organizations. Consistent with the approach taken in the DFA stress test final rules, in general the expectations for Dodd-Frank stress testing practices among companies with at least $50 billion are elevated compared to $10–50 billion companies.

[6] Companies subject to this guidance are not subject to the Federal Reserve's capital plan rule, the Federal Reserve's annual Comprehensive Capital Analysis and Review, supervisory stress tests for capital adequacy, or the related data collections supporting the supervisory stress test. 12 CFR 225.8 (capital plan rule); Supervisory and Company-Run Stress Test Requirements for Covered Companies 12 CFR part 252, subparts E and F; and the Capital Assessment and Stress Testing information collection (FR Y–14Q, FR Y–14M, and FR Y–14A).

concentrations and unique business models and they may not fully cover the potential capital effects of interest rate risk or an operational risk event such as a regional natural disaster.[7] Consistent with the May 2012 stress testing guidance, a company is expected to consider the results of DFA stress testing together with other capital assessment activities to ensure that the company's material risks and vulnerabilities are appropriately considered in its overall assessment of capital adequacy. Finally, the DFA stress tests assess the impact of stressful outcomes on capital adequacy, and are not intended to measure the adequacy of a company's liquidity in the stress scenarios.

III. Annual Tests Conducted by Companies

A. DFA Stress Test Timelines

Rule Requirement: A company must conduct a stress test over a nine-quarter planning horizon based on data as of September 30 of the preceding calendar year.[8]

Under the DFA stress test rules, stress test projections are based on exposures with the as-of date of September 30 and extend over a nine-quarter planning horizon that begins in the quarter ending December 31 of the same year and ends with the quarter ending December 31 two years later.[9] For example, a stress test beginning in the fall of 2013 would use an as-of date of September 30, 2013, and involve quarterly projections of losses, pre-provision net revenue (''PPNR''), balance sheet, risk-weighted assets, and capital beginning on December 31, 2013 of that year and ending on December 31, 2015. In order to project quarterly provisions, a company should estimate the adequate level of the allowance for loan and lease losses (''ALLL'') to support remaining credit risk at the end of each quarter. The ALLL estimation should include the final quarter of the planning horizon, which may require additional projections of credit losses beyond 2015. The ALLL projections for DFA stress testing should be generally consistent with a company's internal ALLL approach; however, some modifications might be necessary, as discussed in more detail below.

B. Scenarios for DFA Stress Tests

Rule Requirement: A company must use the scenarios provided annually by its primary Federal financial regulatory agency to assess the potential impact of the scenarios on its consolidated earnings, losses, and capital.[10]

Under the stress test rules implementing Dodd-Frank Act requirements, $10–50 billion companies must assess the potential impact of a minimum of three macroeconomic scenarios—baseline, adverse, and severely adverse—provided by their primary supervisor on their consolidated losses, revenues, balance sheet (including risk-weighted assets), and capital. The rules defines the three scenarios as follows:

- *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a company that reflect the consensus views of the economic and financial outlook.
- *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.
- *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a company that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

Each agency will provide a description of the supervisory scenarios to companies no later than November 15 each calendar year. The scenarios provided by each agency are not forecasts but rather are hypothetical scenarios that companies will use to assess their capital strength in baseline and stressed economic and financial conditions. Companies should apply each scenario across all business lines and risk areas so that they can assess the effect of a common scenario on the entire enterprise, though the effect of the given scenario on different business lines and risks may vary.

The agencies believe that a uniform set of supervisory scenarios is necessary to provide a basis for comparison across companies. However, a company is not required to use all of the variables provided in the scenario, if those variables are not relevant or appropriate to the company's line of business. In addition, a company may, but is not required to, use additional variables beyond those provided by the agencies. For example, a company may decide to use a regional unemployment rate to improve the robustness of its stress test projections.[11] When using additional variables, companies should ensure that the paths of such variables (including their timing) are consistent with the general economic environment assumed in the supervisory scenarios. More specifically, it would be inappropriate to use a regional or local variable that exhibited limited stress compared to variables in the macroeconomic scenarios provided by the agencies, such as if the approach for deriving that additional variable was based on relatively benign conditions. Any use of additional variables should be well supported and documented.

In addition, a company may choose to project the paths of variables beyond the timeframe of the supervisory scenarios, if a longer horizon is necessary for the company's stress testing methodology. For example, a company may project the unemployment rate for additional quarters in order to calculate inputs to its end-of-horizon ALLL or to estimate the projected value of certain types of securities under the scenario.

Companies may use third-party vendors to assist in the development of additional variables based on the supervisory stress scenarios. In such instances, consistent with existing supervisory expectations,[12] companies should understand the third-party analysis used to develop additional variables, including the potential limitations of such analysis as it relates to stress tests, and be able to challenge key assumptions. Companies should also ensure that vendor-supplied variables they use are relevant for and relate to company-specific characteristics.

C. DFA Stress Test Methodologies and Practices

Rule Requirement: In conducting a stress test, for each quarter of the planning horizon, a company must estimate the following for each required

[7] For purposes of this guidance, the term ''concentrations'' refers to groups of exposures and/or activities that have the potential to produce losses large enough to bring about a material change in a banking organization's risk profile or financial condition.

[8] 12 CFR 46.5 (OCC); 12 CFR 252.14 (Board); 12 CFR 325.204 (FDIC).

[9] Planning horizon means the period of at least nine quarters, beginning with the quarter ending December 31, over which the relevant stress test projections extend.

[10] 12 CFR 46.6 (OCC); 12 CFR 252.14 (Board); 12 CFR 325.204 (FDIC).

[11] The use of additional variables may be used by companies to better link the DFA stress test scenario variables in the supervisory scenarios with a company's unique portfolios and risks. However, consistent with the May 2012 stress testing guidance, no single stress test can capture all possible effects on capital, meaning that the DFA stress tests may not capture the effects of all of a company's risks and vulnerabilities and may need to be supplemented by other stress testing activities.

[12] ''Supervisory Guidance on Model Risk Management,'' OCC 2011–12, or ''Guidance on Model Risk Management,'' Federal Reserve SR 11–7, April 4, 2011.

scenario: Losses, PPNR, provision for loan and lease losses, and net income.[13]

As noted above, companies must identify and determine the impact on capital from the supervisory scenarios, as represented through the supervisory scenario variables and any additional variables chosen by the company. A company's estimation processes should reasonably capture the relationship between the assumed scenario conditions and the projected impacts and outcomes to the company.[14] The agencies expect that the specific methodological practices used by companies to produce the estimates may vary across organizations.

Supervisors generally expect that all banking organizations, as part of overall safety and soundness, will continue to enhance their risk management practices. Accordingly, a $10–50 billion company's DFA stress testing practices should evolve over time. In addition, DFA stress testing practices for $10–50 billon companies should be commensurate with each company's size, complexity, and sophistication. This means that, generally, larger or more sophisticated companies should consider employing not just the minimum expectations, but the more advanced practices described in this guidance. In addition, $10–50 billion companies should consider using more than just the minimum expectations for the exposures and activities of highest impact and that present the highest risk.

The remainder of this section outlines key practices that all $10–50 billion companies should incorporate into their methodologies for estimating losses, PPNR, provision for loan and lease losses (''PLLL''), and net income. It begins with general expectations that apply across various types of estimation methodologies, and then provides additional expectations for specific areas, such as loss estimation, revenue estimation, and balance sheet projections. In making projections, companies should make conservative assumptions about management responses in the stress tests, and should include only those responses for which there is substantial support. For example, companies may account for hedges that are already in place as potential mitigating factors against losses but should be conservative in making assumptions about potential future hedging activities and not necessarily anticipate that actions taken in the past could be taken under the supervisory scenarios.

1. Data Sources

Companies are expected to have appropriate management information systems and data processes that enable them to collect, sort, aggregate, and update data and other information efficiently and reliably within business lines and across the company for use in DFA stress tests. Data used for DFA stress tests should be reliable and generally consistent across time.

In cases where a company may not currently have a full cycle of historical data or data in sufficient granularity on which to base its analyses, it may use an alternative data source, such as a data history drawn from other organizations of comparable market presence, concentrations, and risk profile (for example, regulatory reporting or vendor-supplied data), as a proxy for its own risk profile and exposures. Companies with limited internal data should develop strategies to accumulate the data necessary to improve their estimation practices over time, as having internal data relevant to current exposures generally improves loss projections and provides a better basis for assessment of those projections. The agencies recognize that in some cases companies may not initially have internal data on certain portfolios and thus may rely on proxy data for some time. Such practices may be acceptable provided that the company demonstrates that proxy data are relevant to the company's own exposures and appropriate for the estimation being conducted, and that the company is actively collecting internal data.

Over the long term, companies may continue to use proxy data to benchmark the estimates produced using internal data or to augment any gaps in internal data (for example, if a company is moving into a new business area). However, companies should use proxy data cautiously, as these data may not adequately represent a company's own exposures, business activities, underwriting, and risk characteristics.

Even when a company has extensive historical data, it should look beyond the assumptions based on or embedded in those historical data. Companies should challenge conventional assumptions to ensure that a company's stress test is not constrained by its own past experience. This is particularly important when historical data does not contain stressful periods or if the specific characteristics of the scenarios are unlike the conditions in the available historical data.

2. Data Segmentation

To account for differences in risk profiles across various exposures and activities, companies should segment their portfolios and business activities into categories based on common or related risk characteristics. The company should select the appropriate level of segmentation based on the size, materiality, and risk of a given portfolio, provided there are sufficiently granular historical data available to allow for the desired segmentation. The minimum expectation is that companies will segment their portfolios and business activities using the categories listed in the $10–50 billion reporting form.[15] A company may use more granular segmentation than the $10–50 billion reporting form categories, particularly for more material, concentrated, or relatively riskier portfolios. For instance, a company could have a commercial loan portfolio containing loans to different industries with varying sensitivities to the scenario variables.

More advanced portfolio segmentation can take several forms, such as by product (construction versus income-producing real estate), industry, loan size, credit quality, collateral type, geography, vintage, maturity, debt service coverage, or loan-to-value (LTV) ratio. The company may also pool exposures with common or correlated risk characteristics, such as segmenting loans to businesses related to automobile production. Companies may also segment the portfolio according to geography, if they engage in activities in geographic areas with differing economic and financial characteristics. Such segmentation may be particularly valuable in situations where geographic areas show varying sensitivity to national economic and financial changes or where different scenario variables are necessary to capture key risks (such as projecting wholesale loan losses for regions with different industrial concentrations). For any type of segmentation that is more granular than the categories in the $10–50 billion reporting form, a company should maintain a map of internally defined segments to the $10–50 billion reporting form categories for accurate reporting.

Some companies' business line or risk assessment functions may segment data with more granularity, that is, beyond

[13] 12 CFR 46.6 (OCC); 12 CFR 252.15(a)(1) (Board); 12 CFR 325.205(a)(1) (FDIC).

[14] Additionally, companies' methodologies should be sufficiently documented and transparent so that limitations and areas of uncertainty are clearly identified for users of stress test results and other stakeholders.

[15] For purposes of this guidance, the term ''$10–50 billion reporting form'' refers to the relevant reporting form a $10–50 billion company will use to report the results of its DFA stress tests to its primary Federal financial regulatory agency.

the $10–50 billion reporting form categories, which would support their DFA stress tests. Enhanced data details on borrower and loan characteristics may identify distinct and separate credit risks within a reporting category more effectively, and therefore yield a more accurate risk assessment than simply analyzing the larger aggregate portfolio. Greater segmentation, particularly for larger or riskier portfolios, may prove especially useful in estimating the risks to a portfolio under the adverse or severely adverse scenarios, because aggregated or less segmented portfolios may mask or distort the effect of potentially more stressful conditions on sub-portfolios. While $10–50 billion reporting form categories represent the minimum acceptable segmentation, larger or more sophisticated $10–50 billion companies should consider whether that level of segmentation is sufficient for the risk in their portfolios.

3. Model Risk Management

Companies should have in place effective model risk management practices, including validation, for all models used in DFA stress tests, consistent with existing supervisory guidance.[16] This includes ensuring that DFA stress test models are subject to appropriate standards for model development, implementation and use, model validation, and model governance. Companies should ensure an effective challenge process by unbiased, competent, and qualified parties is in place for all models. There should also be sufficient documentation of all models, including model assumptions, limitations, and uncertainties. Senior management should have appropriate understanding of DFA stress test models to provide summary information to the company's board of directors that allows directors to assess and question methodologies and results. In some cases, companies may not be able to validate all the models used in their DFA stress tests prior to submission; this may be appropriate provided that companies have (1) made an effort to identify models based on materiality and highest risk and prioritize validation activities accordingly, (2) applied compensating controls so that the output from models that are not validated or are only partially validated is not treated the same as the output from fully validated models, and (3) clearly documented such cases and made them transparent in reports to model users, senior management, and other relevant parties. Companies should have an explicit exception process when models are put into production without validation, with heightened levels of management approval for more material models. There should also be timelines with explicit plans for conducting the remaining areas of validation for such models and recognition that any provisional use without validation is temporary.

Companies should ensure that their model risk management policies and practices generally apply to the use of vendor and third-party products as well. This includes all the standards and expectations outlined above and in existing supervisory guidance. If a company is using vendor models, senior management is expected to demonstrate knowledge of the model's design, intended use, applications, limitations and assumptions. For cases in which knowledge about a vendor or third-party model is limited for proprietary or other reasons, companies should take additional steps to ensure that they have an understanding of the model and can confirm it is functioning as intended. For example, companies may need to conduct more sensitivity analysis and benchmarking if information about a vendor model is limited for proprietary or other reasons. Additionally, a company should have as much internal knowledge as possible and contingency plans to prepare for the possibility of vendor contract termination or other situations in which a vendor model is no longer available.

In cases where there are noted weaknesses or limitations in models or data used for stress tests, a company may choose to apply qualitative adjustments to the model or its output that are expert judgment-based. In most cases, however, estimation solely based or heavily reliant on qualitative adjustments should not be the main component of final loss estimates. Where qualitative adjustments are made, they should be consistently determined and applied, and subject to a well-defined process that includes a well-supported rationale, methodology, proper controls, and strong documentation. When expert judgment is used on an ongoing basis, the estimates generated by such judgment should be subject to outcomes analysis, to assess performance equivalent to that used to evaluate a quantitative model. Large qualitative adjustments to the stress test results, especially on a repeated basis, may be indicative of a flawed process.

4. Loss Estimation

For their DFA stress tests, companies are expected to have credible loss estimation practices that capture the risks associated with their portfolios, business lines, and activities. Credit losses associated with loan portfolios and securities holdings should be estimated directly and separately (as described in this section), whereas other types of losses should be incorporated into estimated PPNR (as described in the next section). Processes for loss estimation should be consistent, repeatable, transparent, and well documented. Companies should have a transparent and consistent approach for aggregating loss estimates across the enterprise. For example, inputs from all parts of the company should rely on common assumptions and map to specific loss categories of the $10–50 billion reporting form. A company should ensure that all enterprise loss estimation approaches reflect reasonably sufficient rigor and conservatism, and that, for loss estimation, the scenarios are applied consistently across the company.

Each company's loss estimation practices should be commensurate with the materiality of the risks measured and well supported by sound, empirical analysis. The practices may vary in complexity, depending on data availability and the materiality of a given portfolio. In general, loss estimation practices for credit risk are expected to be more advanced than other elements of the stress test, given that credit risk usually represents the largest potential risk to capital adequacy among $10–50 billion companies.

Companies should be aware that the credit performance in a benign economic environment could differ markedly from that during more stressful periods, and the differences could become greater as the severity of stress increases. For example, companies that experienced low losses on their construction loans during a benign economic environment, due to the presence of interest reserves or other risk-mitigating factors, may experience a sharp and rapid rise in losses in a scenario where market conditions deteriorate for a prolonged period. A company's decision whether to use consistent or different loss estimation processes for various supervisory scenarios should depend on the sensitivity of a company's loss estimation process to a given scenario.

A company may use a consistent process for loss estimation for all scenarios if that process is sufficiently sensitive to the severity of each scenario. Alternately, a company may use different loss estimation processes for different scenarios if the process it uses for the baseline scenario does not

[16] OCC 2011–12 and FR SR 11–7.

adequately capture the sensitivity of loss estimates to adverse and severely adverse scenarios. For example, a company may use its budgeting process for its baseline loss projections, if appropriate, but it should use a different process for the adverse and severely adverse scenarios if its budgeting process does not capture the potential for sharply elevated losses during stressful conditions. Whatever processes a company chooses should be conditioned on each of the three macroeconomic scenarios provided by supervisors.

Companies may choose loss estimation processes from a range of available methods, techniques, and levels of granularity, depending on the type and materiality of a portfolio, and the type and quality of data available. For instance, some companies may choose to base their stress loss estimates on industry historical loss experience, provided that those estimates are consistent with the conditions in the supervisory scenarios. Companies should choose a method that best serves the structure of their credit portfolios, and they may choose different methods for different portfolios (for example, wholesale versus retail). Furthermore, companies may use multiple methods to estimate losses on any given credit portfolio, and investigate different methods before settling on a particular approach or approaches. Regardless of whether a company uses historical loss experience or a more sophisticated modeling technique to estimate losses in a given scenario, the company should verify that resulting loss estimates are appropriately conditioned on the scenario, and any assumptions used are well understood and documented.

In estimating losses based on historical experiences, companies should ensure that historical loss experience contains at least one period when losses were substantially elevated and revenues substantially reduced, such as the downturn of a credit cycle. In addition, companies should ensure that any historical loss data used are consistent with the company's current exposures and condition. This could occur, for instance, if a company has shifted the proportion of its commercial lending from large corporations to smaller businesses, and the shift is not appropriately reflected in its historical loss data. If neither a company's own data history nor industry loss data include periods of stress comparable to the supervisory adverse or severely adverse scenario, the company should make reasonable, conservative assumptions based on available data.

Companies may choose to estimate credit losses at an aggregate level, at a loan-segment level, or at a loan-by-loan level. Aggregate approaches generally involve estimating loan losses for portfolios of loans, such as the $10–50 billion reporting form categories or more granular categories. Loan segmentation approaches group individual loans into segments or pools of obligors with similar risk characteristics to estimate losses. For example, individual 30-year fixed-rate mortgage loans may be pooled into one segment, and 5-year adjustable-rate mortgages (ARMs) into another segment, each to be modeled separately based on the balance, loss, and default history in that loan segment. Loan segments can also be determined based on additional risk characteristics, such as credit score, LTV ratio, borrower location, and payment status. Finally, loan-level approaches estimate losses for each loan or borrower and aggregate those estimates to arrive at portfolio-level losses.

Some of the more commonly used modeling techniques for estimating loan losses include net charge-off models, roll-rate models, and transition matrices. Net charge-off models typically estimate the net charge-off rate for a given portfolio, based on the historical relationship between the net charge offs and relevant risk factors, including macroeconomic variables. Roll-rate models generally estimate the rate at which loans that are current or delinquent in a given quarter roll into delinquent or default status in the next quarter, conditioning such estimates on relevant risk factors. Transition matrices estimate the probability that risk ratings on loans could change from quarter to quarter and observe how transition rates differ in stressful periods compared with less stressful or baseline periods. Some companies may also use an approach where the probability of default, loss given default, and exposure at default are estimated for individual loans, conditioning such estimates on each loan or portfolio risk characteristics and the economic scenario. Companies can benefit from exploring different modeling approaches, giving due consideration to cost effectiveness and with the understanding that more sophisticated methodologies will not necessarily prove more practicable or robust.

Loss estimation practices should be commensurate with the overall size, complexity, and sophistication of the company, as well as with individual portfolios, to ensure they fully capture a company's risk profile. Accordingly, smaller, less sophisticated $10–50 billion companies may employ simpler loss estimation practices that rely on industry historical loss experience at a higher level of aggregation. On the other hand, larger or more sophisticated $10–50 billion companies, including those with more complex portfolios, should consider more advanced loss estimation practices that identify the key drivers of losses for a given portfolio, segment, or loan, determine how those drivers would be affected in supervisory scenarios, and estimate resulting losses.

Loss estimates should include projections of other-than-temporary impairments (OTTI) for securities both held for sale and held to maturity. OTTI projections should be based on positions as of September 30 and should be consistent with the supervisory scenarios and standard accounting treatment. Companies should ensure that their securities loss estimation practices, including definitions of loss used, remain current with regulatory and accounting changes.

5. Pre-Provision Net Revenue Estimation

The projection of potential revenues is a key element of a stress test. For the DFA stress test, companies are required to project PPNR over the planning horizon for each supervisory scenario.[17] Companies should estimate PPNR at a level at least as granular as the components outlined in the $10–50 billion reporting form. Companies should be mindful that revenue patterns could differ markedly in baseline versus stress periods, and should therefore not make assumptions that revenue streams will remain the same or follow similar paths across all scenarios. In estimating PPNR, companies should consider, among other things, how potentially higher nonaccruals, increased collection costs, and changes in funding sources during the adverse and severely adverse scenarios could affect PPNR. Companies should ensure that PPNR projections are generally consistent with projections of losses, the balance sheet, and risk-weighted assets. For example, if a company projects that loan losses would be reduced because of declining loan balances under a severely adverse scenario, PPNR would also be expected to decline under the same scenario due to the decline in interest income. Companies should ensure transparency and appropriate documentation of all material assumptions related to PPNR.

There are various ways to estimate PPNR under stress scenarios and companies are not required to use any

[17] The DFA stress test rules define PPNR as net interest income plus non-interest income less non-interest expense. Non-operational or non-recurring income and expense items should be excluded.

specific method. For example, companies may project each of the three main components of PPNR (net interest income, non-interest income, and non-interest expense) or sub-components of PPNR (e.g., interest income or fee income), on an aggregate level for the entire company or by business line. Companies may base their PPNR estimates on internal or industry historical experience, or use a more sophisticated model-based approach to project PPNR. For example, some companies may project PPNR based on a historical relationship between PPNR or broad components of PPNR and macroeconomic variables. In those instances, companies may use the level of PPNR or the ratio of PPNR to a relevant balance sheet measure, such as assets or loans. Some companies may use a more granular breakout of PPNR (for example, interest income on loans), identify relevant economic variables (for example, interest rates), and employ models based on historical data to project PPNR. Some companies may use their asset-liability management models to project some components of PPNR, such as net-interest income.

A company may estimate the stressed components of PPNR based on its own or industry-wide historical income and expense experience, particularly during the early development of a company's stress testing practices. When using its own history, a company should ensure that the data include at least one stressful period; when using industry data, a company should ensure that such data are relevant to its portfolios and businesses and appropriately reflect potential PPNR under each supervisory scenario. If neither its own data nor industry data include the period of stress that is comparable to the supervisory adverse or severely adverse scenario, a company should make conservative assumptions, based on available data, and appropriately adjust its historical PPNR data downward in its stressed estimate. A company that has been experiencing merger activity, rapid growth, volatile revenues, or changing business models should rely less on its own historical experience, and generally make conservative assumptions.

It may be appropriate for smaller or less sophisticated $10–50 billion companies to employ PPNR estimation approaches that project the three main components of PPNR at the aggregate, company-wide level based on industry experience. Larger or more sophisticated $10–50 billion companies should consider PPNR estimation practices that more fully capture potential risks to their business and strategy by collecting internal revenue data, estimating revenues within specific business lines, exploring more advanced techniques that identify the specific drivers of revenue, and analyzing how the supervisory scenarios affect those revenue drivers. Whatever process a company chooses to employ, projected revenues and expenses should be credible and reflect a reasonable translation of expected outcomes consistent with the key scenario variables.

In addition to the credit losses associated with loan portfolios and securities holdings, described in the previous section, that should be estimated directly and separately, companies may determine that other types of losses could arise under the supervisory scenarios. These other types of losses should be included in projections of PPNR to the extent they would arise under the specified scenario conditions. For example, any trading losses arising from the scenario conditions should be included in the non-interest income component of PPNR. As another example, companies should estimate under the non-interest expense component of PPNR any losses associated with requests by mortgage investors—including both government-sponsored enterprises as well as private-label securities holders—to repurchase loans deemed to have breached representations and warranties, or with investor litigation that broadly seeks damages from companies for losses.

Companies with material representation and warranty risk may consider a range of legal process outcomes, including worse than expected resolutions of the various contract claims or threatened or pending litigation against a company and against various industry participants. Additionally, in estimating non-interest income, companies with significant mortgage servicing operations should consider the effect of the supervisory scenarios on revenue and expenses related to mortgage servicing rights and the associated impact to regulatory capital.

PPNR estimates should also include any operational losses that a company estimates based on the supervisory scenarios provided. Companies should address operational risk in their PPNR projections if such events are related to the supervisory scenarios provided, or if there are pending related issues, such as ongoing litigation, that could affect losses or revenues over the planning horizon.[18]

[18] As noted above, there may be certain aspects of operational risk that a company is not expected to address in DFA stress tests; however, the company should consider those other aspects of operational risk as part of broader stress testing described in the May 2012 stress testing guidance.

6. Balance Sheet and Risk-Weighted Asset Projections

A company is expected to project its balance sheet and risk-weighted assets for each of the supervisory scenarios. In doing so, these projections should be consistent with scenario conditions and the company's prior history of managing through the different business environments, especially stressful ones. For example, a company that has reduced its business activity and balance sheet during past periods of stress or that has contingent exposures should take these factors into consideration. The projections of the balance sheet and risk-weighted assets should be consistent with other aspects of stress test projections, such as losses and PPNR. In addition, balance sheet and risk-weighted asset projections should remain current with regulatory and accounting changes.

Companies may use a variety of methods to project balance sheet and risk-weighted assets. In certain cases, it may be appropriate for a company to use simpler approaches for balance sheet and risk-weighted asset projections, such as a static balance sheet and static risk-weighted assets over the planning horizon; however, companies should consider whether such an approach is appropriate if they have more volatile balance sheets and risk-weighted assets, such as from mergers, acquisitions, or organic growth. Alternatively, a company may rely on estimates of changes in balance sheet and risk-weighted assets based on their own or industry-wide historical experience, provided that the internal or external historical balance sheet and risk-weighted asset experience contains stressful periods. As in the case of loss estimation and PPNR, using industry-wide data might be more appropriate when internal data lack sufficient history, granularity, or observations from stressful periods; however, companies should take caution when using the industry data and provide appropriate documentation for all material assumptions.

Some companies may choose to employ more advanced, model-based approaches to project balance sheet and risk-weighted assets. For example, a company may project outstanding balances for assets and liabilities based on the historical relationship between those balances and macroeconomic variables. In other cases, a company could project certain components of the

balance sheet, for example, based on projections for originations, paydowns, drawdowns, and losses for its loan portfolios under each scenario. Estimated prepayment behavior conditioned on the relevant scenario and the maturity profile of the asset portfolio could inform balance sheet projections.

In stress scenarios, companies should justify major changes in the composition of risk-weighted assets, for example, based on assumptions about a company's strategic direction, including events such as material sales, purchases, or acquisitions. Furthermore, companies should be mindful that any assumptions about reductions in business activity that would reduce their balance sheets and risk-weighted assets over the planning horizon (such as tightened underwriting) are also likely to reduce PPNR. Such assumptions should also be reasonable in that they do not substantially alter the company's core businesses and earnings capacity. Any case in which balance sheet and risk-weighted asset projections decline over the period, and therefore positively affect capital ratios, should be well supported by analysis and data.

7. Estimates for Immaterial Portfolios

Although stress testing should be applied to all exposures as described above, the same level of rigor and analysis may not be necessary for lower-risk, immaterial, portfolios. Portfolios considered immaterial are those that would not represent a consequential effect on capital adequacy under any of the scenarios provided. For such portfolios, it may be appropriate for a company to use a less sophisticated approach for its stress test projections, provided that the results of that approach are conservative and well documented. For example, estimating losses under the supervisory scenarios for a small portfolio of municipal securities may not involve the same sophistication as a larger portfolio of commercial mortgages.

8. Projections for Quarterly Provisions and Ending Allowance for Loan and Lease Losses

The DFA stress test rules require companies to project quarterly PLLL.[19] Companies are expected to project PLLL based on projections of quarterly loan and lease losses and the appropriate ALLL balance at each quarter-end for each scenario. In projecting PLLL, companies are expected to maintain an adequate loan-loss reserve through the planning horizon, consistent with supervisory guidance, accounting standards, and a company's internal practice. Estimated provisions should recognize the potential need for higher reserve levels in the adverse and severely adverse scenarios, since economic stress leads to poorer loan performance.

The ALLL at the end of the planning horizon should include any losses projected beyond the nine-quarter horizon. Given that loss projections for the stress tests can in some cases be conducted at a portfolio level, the ALLL projections may also be conducted at a similar level, provided that they are consistent with the company's existing methodologies to calculate ALLL. Management should ensure that the company's projected ALLL is sufficient to cover remaining loan losses under the scenario for each quarter of the planning horizon, including the last quarter.

9. Projections for Quarterly Net Income

Under the DFA stress test rules, companies must estimate projected quarterly net income for each scenario. Net income projections should be based on loss, revenue, and expense projections described above. Companies should also ensure that tax estimates, including deferred taxes and tax assets, are consistent with relevant balance sheet and income (loss) assumptions and reflect appropriate accounting, tax, and regulatory changes.

D. Estimating the Potential Impact on Regulatory Capital Levels and Capital Ratios

Rule Requirement: In conducting a stress test, for each quarter of the planning horizon a company must estimate: the potential impact on regulatory capital levels and capital ratios (including regulatory capital ratios and any other capital ratios specified by the primary supervisor), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.[20]

In the DFA stress test rules, companies are required to estimate the impact of supervisory scenarios on capital levels and ratios, based on the estimates of losses, PPNR, loan and lease provisions, and net income, as well as projections of the balance sheet and risk-weighted assets. Companies must estimate projected quarterly regulatory capital levels and regulatory capital ratios for each scenario. Stress tests are intended to assess the negative impact on companies' capital positions from hypothetical stress conditions; as such, the agencies expect companies' post-stress capital ratios under the adverse and severely adverse scenarios to be lower than under the baseline scenario. Any rare cases in which ratios are higher under the adverse and severely adverse scenarios should be very well supported by analysis and documentation. Projected capital levels and ratios should reflect applicable regulations and accounting standards for each quarter of the planning horizon.

Rule Requirement: A bank holding company or savings and loan holding company is required to make the following assumptions regarding its capital actions over the planning horizon:

1. For the first quarter of the planning horizon, the bank holding company or savings and loan holding company must take into account its actual capital actions as of the end of that quarter.

2. For each of the second through ninth quarters of the planning horizon, the bank holding company or savings and loan holding company must include in the projections of capital:

(a) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(b) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(c) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.[21]

In their DFA stress tests, bank holding companies and savings and loan holding companies are required to calculate pro forma capital ratios using a set of capital action assumptions based on historical distributions, contracted payments, and a general assumption of no redemptions, repurchases, or issuances of capital instruments. A holding company should also assume it will not issue any new common stock, preferred stock, or other instrument that would count in regulatory capital in the second through ninth quarters of the planning horizon, except for any common issuances related to expensed employee compensation.

While holding companies are required to use specified capital action

[19] 12 CFR 46.6(a)(1) (OCC); 12 CFR 252.15(a)(1) (Board); 12 CFR 325.206(b) (FDIC).

[20] 12 CFR 46.6(a)(2) (OCC); 12 CFR 252.15(a)(2) (Board); 12 CFR 325.205(a)(2) (FDIC).

[21] 12 CFR 252.15(b).

assumptions, there are no specified capital actions for banks and thrifts. A bank or thrift should use capital actions that are consistent with the scenarios and the company's internal practices in their DFA stress tests. For banks and thrifts, projections of dividends that represent a significant change from practice in recent quarters, for example to conserve capital in a stress scenario, should be evaluated in the context of corporate restrictions and board decisions in historical stress periods. Additionally, a holding company should consider that it is required to use certain capital assumptions that may not be the same as the assumptions used by its bank subsidiaries. Finally, any assumptions about mergers or acquisitions, and other strategic actions should be well documented and should be consistent with past practices of management and the board during stressed economic periods. Should the stress-test submissions for the bank or thrift and its holding company differ in terms of projected capital actions (e.g., different dividend payout assumptions during the stress test horizon for the bank versus the holding company) as a result of the different requirements of the DFA stress test rules, the institution should address such differences in the narrative portion of their submissions.

E. Controls, Oversight, and Documentation

Rule requirement: Senior management must establish and maintain a system of controls, oversight and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements of the DFA stress test rule. These policies and procedures must, at a minimum, describe the company's stress testing practices and methodologies, and describe the processes for validating and updating practices and methodologies consistent with applicable laws, regulations, and supervisory guidance. The board of directors, or a committee thereof, of a company must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually.[22]

Pursuant to the DFA stress test requirement, a company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures that apply to all of its DFA stress test components. This system of controls, oversight, and documentation should be consistent with the May 2012 stress testing guidance. Policies and procedures for DFA stress tests should be comprehensive, ensure a consistent and repeatable process, and provide transparency regarding a company's stress testing processes and practices for third parties. The policies and procedures should provide a clear articulation of the manner in which DFA stress tests should be conducted, roles and responsibilities of parties involved (including any external resources), and describe how DFA stress test results are to be used. These policies and procedures also should be integrated into other policies and procedures for the company. The board (or a committee thereof) must approve and review the policies and procedures for DFA stress tests to ensure that policies and procedures remain current, relevant, and consistent with existing regulatory and accounting requirements and expectations as frequently as economic conditions or the condition of the company may warrant, but no less than annually.

Senior management must establish policies and procedures for DFA stress tests and should ensure compliance with those policies and procedures, assign competent staff, oversee stress test development and implementation, evaluate stress test results, and review any findings related to the functioning of stress testing processes. Senior management should ensure that weaknesses—as well as key assumptions, limitations and uncertainties—in DFA stress testing processes and results are identified, communicated appropriately within the organization, and evaluated for the magnitude of impact, taking prompt remedial action where necessary. Senior management, directly and through relevant committees, should also be responsible for regularly reporting to the board regarding DFA stress test developments (including the process to design tests and augment or map supervisory scenarios), DFA stress test results, and compliance with a company's stress testing policy.

A company's system of documentation should include the methodologies used, data types, key assumptions, and results, as well as coverage of the DFA stress tests (including risks and exposures included). For any models used, documentation should include sufficient detail about design, inputs, assumptions, specifications, limitations, testing, and output. In general, documentation on methodologies used should be consistent with existing supervisory guidance.

Companies should ensure that other aspects of governance over methodologies used for DFA stress tests are appropriate, consistent with the May 2012 stress testing guidance. Specifically, companies should have policies, procedures, and standards for any models used. Effective governance should include validation and effective challenge for any assumptions or models used, and a description of any remedial steps in cases where models are not validated or validation identifies substantial issues. A company should ensure that internal audit evaluates model risk management activities related to DFA stress tests, which should include a review of whether practices align with policies, as well as how deficiencies are identified, monitored, and addressed.

Rule requirements: The board of directors and senior management of the company must receive a summary of the results of the stress test. The board of directors and senior management of a company must consider the results of the stress test in the normal course of business, including, but not limited to, the company's capital planning, assessment of capital adequacy, and risk management practices.[23]

A company's board of directors is ultimately responsible for the company's DFA stress tests. Board members must receive summary information about DFA stress tests, including results from each scenario. The board or its designee should appropriately evaluate and discuss this information, ensuring that the DFA stress tests are consistent with the company's risk appetite and overall business strategy. The board should ensure it remains informed about critical review of elements of the DFA stress tests conducted by senior management or others (such as internal audit), especially regarding key assumptions, uncertainties, and limitations. In addition, the board of directors and senior management of a $10–50 billion company must consider the role of stress testing results in normal business including in the capital planning, assessment of capital adequacy, and risk management practices of the company. A company should appropriately document the manner in which DFA stress tests are used for key decisions about capital adequacy, including capital actions and capital contingency plans. The company

[22] 12 CFR 46.5(d) (OCC); 12 CFR 252.15(c) (Board); 12 CFR 325.205(b) (FDIC).

[23] 12 CFR 46.5(d) and 46.6(c)(2) (OCC); 12 CFR 252.15(c)(3) (Board); 12 CFR 325.205(b)(2) and (3) (FDIC).

should indicate the extent to which DFA stress tests are used in conjunction with other capital assessment tools, especially if the DFA stress tests may not necessarily capture a company's full range of risks, exposures, activities, and vulnerabilities that have the potential to affect capital adequacy. In addition, a company should determine whether its post-stress capital results are aligned with its internal capital goals. For cases in which post-stress capital results are not aligned with a company's internal capital goals, senior management should provide options it and the board would consider to bring them into alignment.

F. Report to Supervisors

Rule Requirement: A company must report the results of the stress test to its primary supervisor and to the Board of Governors by March 31, in the manner and form prescribed by the agency.[24]

All $10–50 billion companies must report the results of their DFA company-run stress tests on the $10–50 billion reporting form. This report will include a company's quantitative projections of losses, PPNR, balance sheet, risk-weighted assets, ALLL, and capital on a quarterly basis over the duration of the scenario and planning horizon. In addition to the quantitative projections, companies are required to submit qualitative information supporting their projections. The report of the stress test results must include, under each scenario: a description of the types of risks included in the stress test, a description of the methodologies used in the stress test, an explanation of the most significant causes for the changes in regulatory capital ratios, and any other information required by the agencies. In addition, the agencies may request supplemental information, as needed.

If significant errors or omissions are identified subsequent to filing, a company must file an amended report. For additional information, see the instructions provided with the reporting templates.

G. Public Disclosure of DFA Test Results

Rule Requirement: A company must disclose a summary of the results of the stress test in the period beginning on June 15 and ending on June 30.[25]

Under the DFA stress test rules, a company must make its first DFA stress test-related public disclosure between June 15 and June 30, 2015, by disclosing summary results of its annual DFA stress test, using September 30, 2014, financial statement data.[26] The regulation requires holding companies to include in their public disclosure a summary of the results of the stress tests conducted by any subsidiaries subject to DFA stress testing.[27] A bank can satisfy this public disclosure requirement by including a summary of the results of its stress test in its parent company's public disclosure (on the same timeline); however the agencies can require a separate disclosure if the parent company's public disclosure does not adequately capture the impact of the scenarios on the bank.

The summary of the results of the stress test, including both quantitative and qualitative information, should be included in a single release on a company's Web site, or in any other forum that is reasonably accessible to the public.

Each bank or thrift must publish a summary of its stress tests results separate from the results of stress tests conducted at the consolidated level of its parent holding company, but the company may include this summary with its holding company's public disclosure. Thus, a bank or thrift with a parent holding company that is required to conduct a company-run DFA stress test under the Federal Reserve Board's DFA stress test rules will have satisfied its public disclosures requirement when the parent holding company discloses summary results of its subsidiary's annual stress test in satisfaction of the requirements of the applicable regulations of the company's primary Federal regulator, unless the company's primary Federal regulator determines that the disclosures at the holding company level does not adequately capture the potential impact of the scenarios on the capital of the companies.

A company must disclose, at a minimum, the following information regarding the severely adverse scenario:

a. A description of the types of risks included in the stress test;

b. A summary description of the methodologies used in the stress test;

c. Estimates of—

Aggregate losses;

PPNR;

PLLL;

Net income; and

Pro forma regulatory capital ratios and any other capital ratios specified by the primary Federal regulator;

d. An explanation of the most significant causes for the changes in regulatory capital ratios; and

e. For bank holding companies and savings and loan holding companies: For a stress test conducted by an insured depository institution subsidiary of the bank holding company or savings and loan holding company pursuant to section 165(i)(2) of the Dodd-Frank Act, changes in regulatory capital ratios and any other capital ratios specified by the primary Federal regulator of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

It should be clear in the company's public disclosure that the results are conditioned on the supervisory scenarios. Items to be publicly disclosed should follow the same definitions as those provided in the confidential report to supervisors. Companies should disclose all of the required items in a single public release, as it is difficult to interpret the quantitative results without the qualitative supporting information.

DIFFERENCES IN DFA STRESS TEST REQUIREMENTS FOR HOLDING COMPANIES VERSUS BANKS AND THRIFTS

	Bank holding companies and savings and loan holding companies	Banks and thrifts
Capital actions used for company-run stress tests.	Capital actions prescribed in Federal Reserve Board's DFA stress tests rules. Generally based on historical dividends, contracted payments, and no repurchases or issuances.	No prescribed capital actions. Banks and thrifts should use capital actions consistent with the scenario and their internal business practices.

[24] 12 CFR 46.7 (OCC); 12 CFR 252.16 (Board); 12 CFR 325.206 (FDIC).

[25] 12 CFR 46.8 (OCC); 12 CFR 252.17 (Board); 12 CFR 325.207 (FDIC).

[26] The exception is any $10–50 billion state member bank that is a subsidiary of a bank holding company or a savings and loan holding company with average total consolidated assets of $50 billion or more; in that case, the state member bank subsidiary must disclose a summary of the results of the stress test in the period beginning on March 15 and ending on March 31.

[27] 12 CFR 252.17(b).

DIFFERENCES IN DFA STRESS TEST REQUIREMENTS FOR HOLDING COMPANIES VERSUS BANKS AND THRIFTS—Continued

	Bank holding companies and savings and loan holding companies	Banks and thrifts
Public disclosure of company-run stress tests.	Disclosure must include information on stress tests conducted by subsidiaries subject to DFA stress tests.	Disclosure requirement met when parent company disclosure includes the required information on the bank or thrift's stress test results, unless the company's primary regulator determines that the disclosure at the holding company level does not adequately capture the potential impact of the scenarios on the capital of the company.

Dated: February 19, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 5, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 5th day of March, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–05518 Filed 3–12–14; 8:45 am]

BILLING CODE 4810–33–P; 6714–01–P; 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1158; Directorate Identifier 2010–SW–018–AD; Amendment 39–17765; AD 2011–22–05 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held By Eurocopter France) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising Airworthiness Directive (AD) 2011–22–05 for Eurocopter France (Eurocopter) Model AS350B, B1, B2, B3, BA, C, D, D1, AS355E, F, F1, F2, N, and NP helicopters with certain tail rotor (T/R) pitch control rods (control rods) installed. AD 2011–22–05 required checking the control rod for play before the first flight of each day. This new AD requires checking the control rod for play within 30 hours time-in-service (TIS) and, if no bearing play is detected, thereafter at intervals not to exceed 30 hours TIS. The actions in this AD are intended to prevent failure of a T/R control rod, loss of T/R control, and subsequent loss of control of the helicopter.

DATES: This AD is effective April 17, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* in Docket No. FAA–2011–1158 or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference information, the economic evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2011–22–05, Amendment 39–16847 (76 FR 70046, November 10, 2011). AD 2011–22–05 applied to Eurocopter Model AS350B, B1, B2, B3, BA, C, D, D1; and Model AS355E, F, F1, F2, N, and NP helicopters with T/R control rod, part number (P/N) 350A33–2100–00, –01, –02, –03, –04; P/N 350A33–2121–00, –01, –02; P/N 350A33–2143–00; or P/N 350A33–2145–00 or –01, installed. AD 2011–22–05 required checking the control rod for play before the first flight of each day. The NPRM, published in the **Federal Register** on September 26, 2013 (78 FR 59298), proposed to extend the required time to check control rod play to within 30 hours TIS and, if no bearing play is detected, thereafter at intervals not to exceed 30 hours TIS.

The NPRM was based on our determination that we can safely extend the compliance time for the initial bearing play check and the interval for recurring checks. We also clarified the requirements of that check and removed a previous requirement that if the Teflon cloth is coming out of its normal position within the bearing, or if there is discoloration or scoring on the bearing, that the control rod be replaced with an airworthy rod before further flight. These actions are intended to prevent failure of a control rod, loss of T/R control, and subsequent loss of control of the helicopter.

Since we issued the NPRM, Eurocopter France has changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (78 FR 59298, September 26, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as

proposed except for the minor change previously described. This change is consistent with the intent of the proposals in the NPRM (78 FR 59298, September 26, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information

Eurocopter issued Alert Service Bulletin (ASB) No. 05.00.60 for the Model AS350 series helicopters, and ASB No. 05.00.56 for the Model AS355 series helicopters, both Revision 0, and both dated December 9, 2009. These ASBs specify performing an initial and recurring check for play in the pitch-change links. If axial play in the ball-joint is detectable, the ASBs specify removing the pitch-change link and measuring the bearing wear using a dial indicator. EASA classified these ASBs as mandatory and issued EASA AD No. 2010–0006, dated January 7, 2010, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD affects 936 helicopters of U.S. Registry. We estimate, per helicopter, it will take minimal work-hours to do the check, 1 work-hour to measure the bearing play, and 1 work-hour to replace 1 control rod. The average labor rate is $85 per work-hour. Required parts cost about $1,724 to replace a control rod per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators is minimal for the check. Measuring the bearing play, if needed, costs $85 per helicopter, and replacing 1 control rod costs $1,809 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–22–05, Amendment 39–16847 (76 FR 70046, November 10, 2011), and adding the following new AD:

2011–22–05 R1 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) (Airbus Helicopters): Amendment 39–17765; Docket No. FAA–2011–1158; Directorate Identifier 2010–SW–018–AD.

(a) Applicability

This AD applies to Airbus Model AS350B, B1, B2, B3, BA, C, D, D1; and Model AS355E, F, F1, F2, N, and NP helicopters; with tail rotor (T/R) pitch control rod (control rod), part number (P/N) 350A33–2100–00, –01, –02, –03, –04; P/N 350A33–2121–00, –01, –02; P/N 350A33–2143–00; or P/N 350A33–2145–00 or –01, installed; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive play in the control rod. This condition could result in failure of a T/R control rod, loss of T/R control, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD revises AD 2011–22–05, Amendment 39–16847 (76 FR 70046, November 10, 2011).

(d) Effective Date

This AD becomes effective April 17, 2014.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 30 hours time-in-service (TIS) and, if no bearing play is detected, thereafter at intervals not to exceed 30 hours TIS, place the T/R pedals in the neutral position. If the helicopter is fitted with a T/R load compensator, discharge the accumulator as described in the rotorcraft flight manual. Check the control rod bearing (bearing) for play on the helicopter, by observation and feel, by slightly moving the T/R blade in the flapping axis while monitoring the bearing for movement. See the following Figure 1 to Paragraph (f) of this AD. The actions required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the helicopter maintenance records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

BILLING CODE 4910–13–P

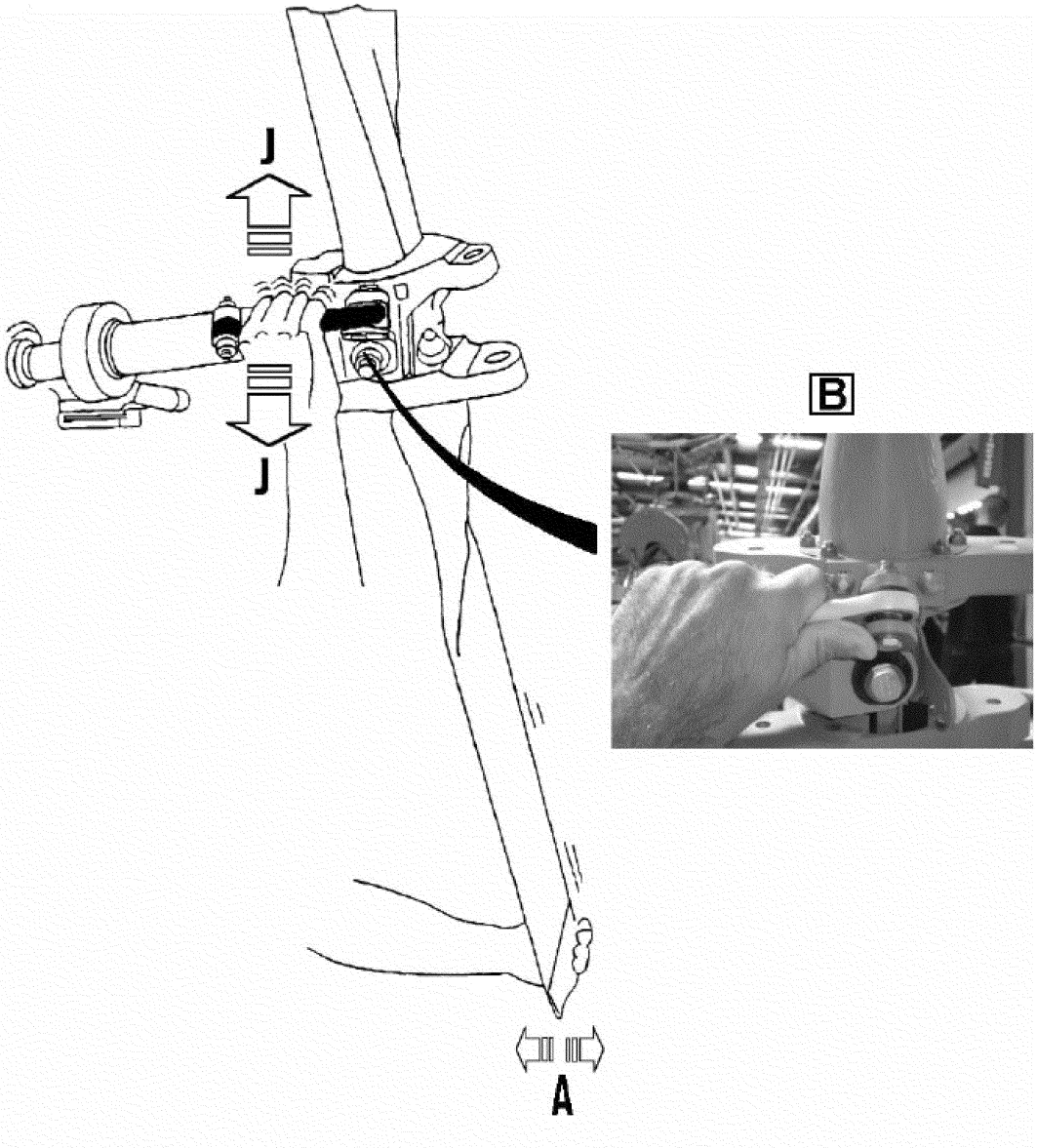

Figure 1 to Paragraph (f)
Manual Check for Play of the Tail Rotor Pitch Control Rod

(2) If a pilot or mechanic detects play in the bearing, before the next flight, a mechanic must remove the control rod from the helicopter, and using a dial indicator, measure the bearing wear according to the following and as shown in Figures 2 and 3 to Paragraph (f) of this AD:

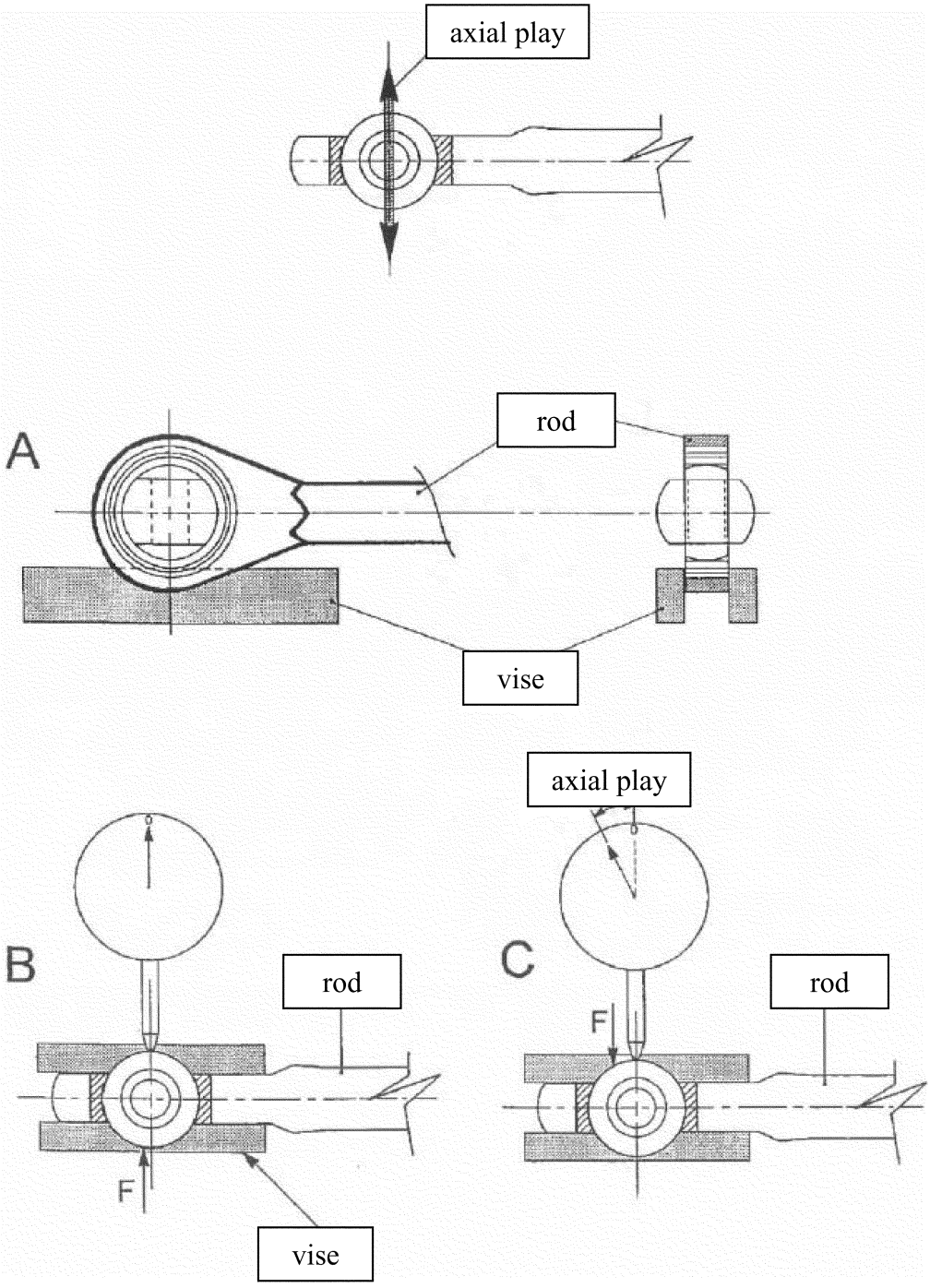

Figure 2 to Paragraph (f)
Measurement of the Axial Play (A) of the Bearing

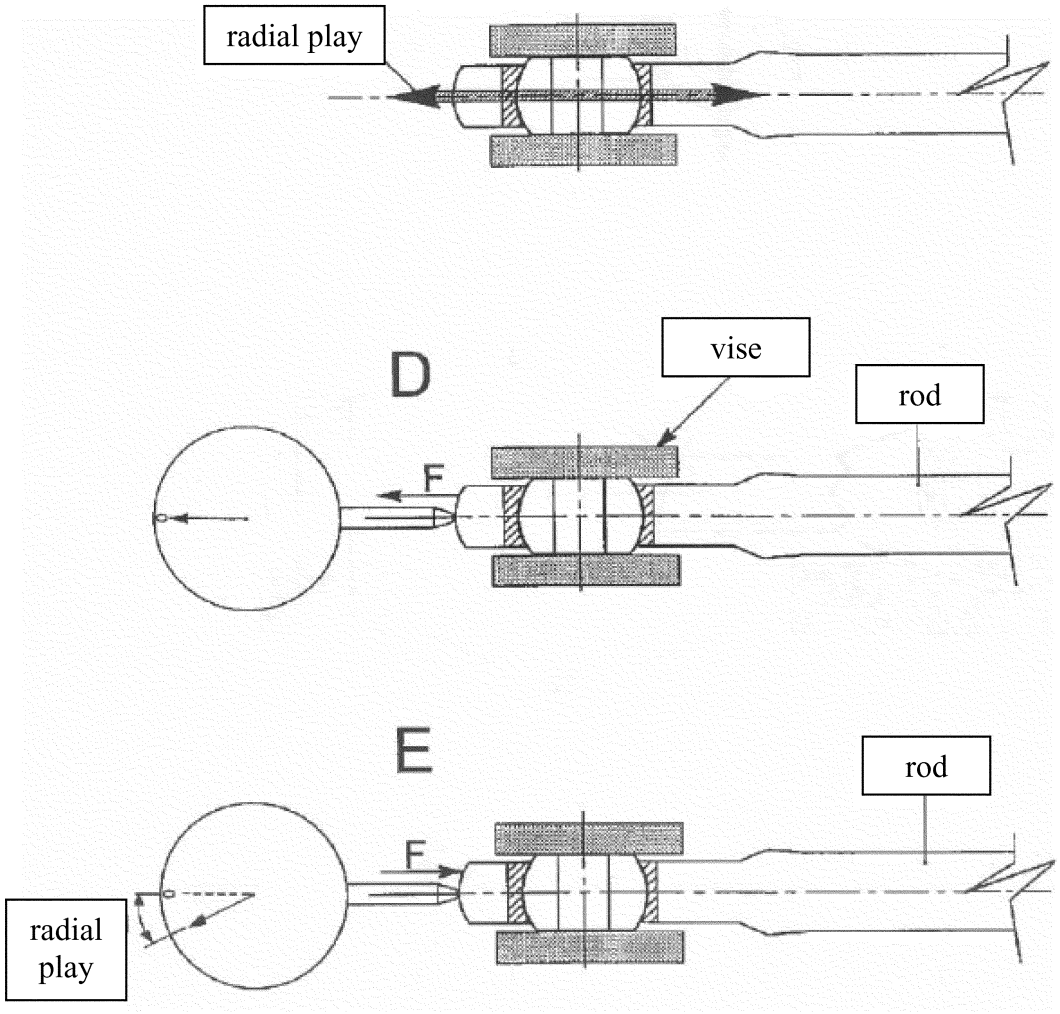

Figure (3) to Paragraph (f)
Measurement of the Radial Play (R) of the Bearing

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(i) Remove the control rod from the helicopter.

(ii) Mount the control rod in a vise as shown in Figure 2 to Paragraph (f) of this AD.

(iii) Using a dial indicator, take axial play readings by moving the spherical bearing in the direction F (up and down) as shown in Figure 2 to Paragraph (f) of this AD.

(iv) Install a bolt through the bearing and secure it with a washer and nut to provide a clamping surface when the bearing is clamped in a vise.

(v) Mount the control rod and bearing in a vise as shown in Figure 3 to Paragraph (f) of this AD.

(vi) Using a dial indicator, take radial play measurements by moving the control rod in the direction F as shown in Figure 3 to Paragraph (f) of this AD.

(vii) Record the hours of operation on each control rod.

(viii) If the radial play exceeds 0.008 inch or axial play exceeds 0.016 inch, replace the control rod with an airworthy control rod before further flight.

(ix) If the radial and axial play are within limits, reinstall the control rod.

(x) Thereafter, at intervals not to exceed 30 hours TIS, remove the control rod and measure the bearing play with a dial indicator in accordance with paragraph (f)(2) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

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

(h) Additional Information

(1) Eurocopter Alert Service Bulletin (ASB) No. 05.00.60 and ASB No. 05.00.56, both Revision 0, and both dated December 9, 2009, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2010–0006, dated January 7, 2010. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2011–1158.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6720, Tail rotor control system.

Issued in Fort Worth, Texas, on January 31, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–04282 Filed 3–12–14; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

RIN 3038–AD88

Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is correcting final rules published in the **Federal Register** of November 14, 2013 (78 FR 68506). Those rules, 17 CFR Parts 1, 3, 22, 30, and 140, took effect on January 13, 2014. This correction amends Appendix E to Part 30 correcting a typographical error contained in that appendix.

DATES: Effective on March 13, 2014.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov,* or Mark Bretscher, Attorney-Advisor, 312–596–0529, *mbretscher@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 14, 2013 (78 FR 68506), the CFTC published final rules adopting new regulations and amending existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants. Those rules include Appendix E to Part 30—Acknowledgement Letter for CFTC Regulation 30.7 Customer Secured Account (''acknowledgment letter''). The third sentence of the second full paragraph of the body of the Appendix E acknowledgement letter contains a typographical error. Specifically, the phrase ''lines or credit'' should read ''lines of credit''. The Commission is making a correcting amendment to Appendix E to Part 30 to correct that error.

List of Subjects in 17 CFR Part 30

Commodity futures, Consumer protection, Currency, Reporting and recordkeeping requirements.

Accordingly, 17 CFR part 30 is corrected by making the following correcting amendment:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

■ 2. Revise Appendix E to part 30 to read as follows:

Appendix E to Part 30—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Account

[Date]

[Name and Address of Depository]

We refer to the Secured Amount Account(s) which [Name of Futures Commission Merchant] (''we'' or ''our'') have opened or will open with [Name of Depository] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 30.7 Customer Secured Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, '', Abbreviated as [short title reflected in the depository's electronic system]'']

Account Number(s): [ ] (collectively, the ''Account(s)'').

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively ''Funds'') of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation 30.1, as amended); that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us, in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 30 of the CFTC's regulations, as amended; that the Funds may not be commingled with our own funds in any proprietary account we maintain with you; and that the Funds must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulation 30.7.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (''DSRO''), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

You further acknowledge and agree that, pursuant to authorization granted by us to you previously or herein, you have provided, or will promptly provide following the opening of the Account(s), the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor division, or such director's designees, with technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information for the Account(s). This letter constitutes the authorization and direction of the undersigned on our behalf for you to establish this connectivity and access if not previously established, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the

requested information or access to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information or access request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not 30.7 customer funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or Part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Depository]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

Issued in Washington, DC, on March 7, 2014, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2014–05465 Filed 3–12–14; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2012–F–1100]

Food Additives Permitted in Feed and Drinking Water of Animals; Benzoic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of benzoic acid as an acidifying agent in swine feed. This action is in response to a food additive petition filed by DSM Nutritional Products.

DATES: This rule is effective March 13, 2014. Submit either written or electronic objections and requests for a hearing by April 14, 2014. See section V of this document for information on the filing of objections.

ADDRESSES: You may submit either electronic or written objections and a request for a hearing, identified by Docket No. FDA–2012–F–1100, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, *isabel.pocurull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 4, 2012 (77 FR

71750), FDA announced that a food additive petition (animal use) (FAP 2273) had been filed by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposed to amend the food additive regulations to provide for the safe use of benzoic acid as a feed acidifier in swine feed. The notice of filing provided for a 30-day comment period on the petitioner's environmental assessment. One comment was received that was not substantive.

II. Conclusion

FDA concludes that the data establish the safety and utility of benzoic acid for use as proposed with modification and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), the Agency will delete from the documents materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Add § 573.210 to read as follows:

§ 573.210 Benzoic acid.

The food additive, benzoic acid, may be safely used in the manufacture of complete swine feeds in accordance with the following prescribed conditions:

(a) The additive is used or intended for use as a feed acidifying agent, to lower the pH, in complete swine feeds at levels not to exceed 0.5 percent of the complete feed.

(b) The additive consists of not less than 99.5 percent benzoic acid (CAS 65–85–0) by weight with the sum of 2-methylbiphenyl, 3-methylbiphenyl, 4-methylbiphenyl, benzyl benzoate, and isomers of dimethylbiphenyl not to exceed 0.01 percent by weight.

(c) To assure safe use of the additive, in addition to the other information required by the Federal Food, Drug, and Cosmetic Act and paragraph (b) of this section, the label and labeling shall contain:

(1) The name of the additive.

(2) Adequate directions for use including a statement that benzoic acid must be uniformly applied and thoroughly mixed into complete swine feeds and that the complete swine feeds so treated shall be labeled as containing benzoic acid.

(3) Appropriate warnings and safety precautions concerning benzoic acid.

(4) A warning statement identifying benzoic acid as a possible irritant.

(5) Information about emergency aid in case of accidental exposure.

(6) Contact address and telephone number for reporting adverse reactions or to request a copy of the Material Safety Data Sheet (MSDS).

Dated: March 6, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–05440 Filed 3–12–14; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0683; FRL–9905–26–Region 9]

Revisions to the California State Implementation Plan; South Coast Air Quality Management District and El Dorado County Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of revisions to the South Coast Air Quality Management District and El Dorado County Air Quality Management District portions of the California State Implementation Plan (SIP). The South Coast action was proposed in the **Federal Register** on September 13, 2013 and concerns carbon monoxide emissions from cement kilns. The El Dorado County action was proposed in the **Federal Register** on October 25, 2013 and concerns the District's demonstration that its rules met reasonably available control technology (RACT) requirements under the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS). We are approving these documents under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on April 14, 2014.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0683 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps,

multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On September 13, 2013 (78 FR 56639) under Docket# EPA–R09–OAR–2013–0596, EPA proposed to approve the following rule into the California SIP.

Local agency	Rule #	Rule title	Amended	Submitted
SCAQMD	1112.1	Emissions of Particulate Matter and Carbon Monoxide from Cement Kilns	12/4/09	07/20/10

On October 25, 2013 (78 FR 63934) under Docket# EPA–R09–OAR–2013–0683, EPA proposed to approve the following document into the California SIP.

Local agency	Document	Adopted	Submitted
EDAQMD	EDAQMD Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Update Analysis Staff Report (''2006 RACT SIP'').	02/06/07	07/11/07

Our technical support document for the proposed approval of EDAQMD's 2006 RACT SIP included a suggestion that EDAQMD submit negative declarations for the metal parts and products, solvent metal cleaning, and graphic arts Control Technique Guidelines categories. These negative declarations were submitted to EPA on September 30, 2013, and we are taking separate action on them.

We proposed to approve SCAQMD Rule 1112.1 and EDAQMD's 2006 RACT SIP because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the submitted documents and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed actions provided a 30-day public comment period. The docket for South Coast Rule 1112.1 ''Emissions of Particulate Matter and Carbon Monoxide from Cement Kilns'' received one comment. The comment was not germane to the proposed action and requested clarification on the geographic boundary to which the Santa Barbara County Air Pollution Control District's outer continental shelf applied. EPA provided a separate reply to the commenter. We received no comments on the proposed approval of El Dorado County's 2006 RACT SIP.

III. EPA Action

No comments were submitted that change our assessment of the submitted documents as described in our proposed actions. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these documents into the California SIP.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 [insert date 60 days from date of publication of this document in the **Federal Register**]. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 16, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(381) (i)(K) and (382)(ii) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(381) * * *

(i) * * *

(K) South Coast Air Quality Management District.

(*1*) Rule 1112.1, ''Emissions of Particulate Matter and Carbon Monoxide from Cement Kilns,'' amended on December 4, 2009.

* * * * *

(382) * * *

(i) * * *

(ii) Additional Material

(A) El Dorado County Air Quality Management District.

(*1*) El Dorado County Air Quality Management District Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Update Analysis Staff Report (''2006 RACT SIP'') adopted on February 6, 2007.

* * * * *

[FR Doc. 2014–05387 Filed 3–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0806; FRL–9905–18–Region 9]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from graphic arts operations and from surface preparation and cleaning operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on May 12, 2014 without further notice, unless EPA receives adverse comments by April 14, 2014. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0806, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by PCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
PCAPCD	239	Graphic Arts Operations	10/11/12	02/06/13
PCAPCD	240	Surface Preparation and Cleanup	12/11/03	09/24/13

B. Are there other versions of these rules?

We approved an earlier version of PCAPCD Rule 239 into the SIP on November 13, 1998 (63 FR 63410). No previous version of PCAPCD Rule 240 has been approved into the SIP.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions by limiting VOC content in solvents and coatings. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(1) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate and above ozone nonattainment areas. Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations'' EPA, May 25, 1988 (the Bluebook),

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies'' EPA, Region 9, August 21, 2001 (the Little Bluebook),

3. ''Control Techniques Guidelines for Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing, September 2006 (EPA–453/R–06–002),

4. ''Control Techniques Guidelines for Control of Volatile Organic Compound Emissions from Industrial Cleaning Solvents'', EPA, September 2006 (EPA–453/R–06–001)

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 14, 2014, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 12, 2014. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 May 12, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 19, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(428) (i)(A)(*2*) and (c)(434) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(428) * * *

(i) * * *

(A) * * *

(*2*) Rule 239, ''Graphic Arts Operations,'' amended on October 11, 2012.

* * * * *

(434) New and amended regulations for the following APCDs was submitted on September 24, 2013, by the Governor's Designee.

(i) Incorporation by Reference.

(A) Placer County Air Pollution Control District.

(*1*) Rule 240, ''Surface Preparation and Cleanup,'' amended on December 11, 2003.

* * * * *

[FR Doc. 2014–05229 Filed 3–12–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 12

[Docket ID: FEMA–2014–0011]

RIN 1660–AA81

Removal of Federal Advisory Committee Act Regulations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule removes the regulations that implement the Federal Advisory Committee Act (FACA) for the Federal Emergency Management Agency (FEMA). FEMA's implementation of FACA is now governed by the rules promulgated by the General Services Administration (GSA) and by the policies issued by the Department of Homeland Security (DHS).

DATES: *Effective Date:* April 14, 2014.

FOR FURTHER INFORMATION CONTACT:

Program Information: Demaris Belanger, Group Federal Officer (GFO), Office of the Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, Room 706–A, 500 C Street SW., Washington, DC 20472–3000, phone: 202–212–2182, email: *demaris.belanger@dhs.gov.*

Legal Information: Michael Delman, Attorney Advisor, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC 20472–3100, phone: 202–646–2447, email: *michael.delman@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Advisory Committee Act [1] of 1972 (FACA) governs the establishment, operation, oversight, and termination of advisory committees within the executive branch of the Federal Government. With certain exceptions, an advisory committee is ''any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof'' established or utilized by the President or one or more agencies, or established by statute, for the purpose of obtaining advice or recommendations.[2] FACA includes requirements that each advisory committee have a charter and that meetings be open to the public, subject to certain limited exceptions.[3] FACA also establishes a Committee Management Secretariat within the General Services Administration (GSA) that is responsible for all matters related to advisory committees.[4] Pursuant to Executive Order 12024, the Administrator of GSA has been delegated all of the functions vested in the President by FACA. FACA requires that each agency establish uniform administrative guidelines and management controls for advisory committees established by the agency.[5] The Federal Emergency Management

[1] Public Law 92–463, 86 Stat. 770 (Oct. 6, 1972), as amended, 5 U.S.C. App.

[2] Sec. 3, Public Law 92–463, as amended, 5 U.S.C. App.

[3] Secs. 9, 10, Public Law 92–463, as amended, 5 U.S.C. App.

[4] Sec. 7, Public Law 92–463, as amended, 5 U.S.C. App.

[5] Sec. 8, Public Law 92–463, as amended, 5 U.S.C. App.

Agency (FEMA) implemented the requirements of FACA through regulations published at 44 CFR part 12 titled ''Advisory Committees'' on September 29, 1980.[6] FEMA has made subsequent technical changes, but has made no substantive changes to the rule.[7]

On April 28, 1983, GSA published an interim final rule providing administrative and interpretative guidelines for Federal agencies on the implementation of FACA [8], followed by a final rule on December 2, 1987.[9] GSA published another final rule on October 5, 1989 to clarify aspects of the 1987 rule.[10] In 1997, GSA determined that the 1987 and 1989 regulations had become out-of-date as a result of significant decisions issued by the Supreme Court and other Federal Courts. On June 10, 1997, GSA issued an Advance Notice of Proposed Rulemaking to seek input on a proposed revision.[11] GSA published a proposed rule on January 14, 2000 [12] and a final rule on July 19, 2001.[13] The 2001 GSA FACA rule is codified at 41 CFR part 102–3. The rule ''provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act.'' 41 CFR 102–3.5.

II. Discussion of the Rule

This rule removes FEMA's regulations implementing FACA at 44 CFR part 12. FEMA's regulations implementing FACA are obsolete. Since FEMA promulgated its rule in 1980, GSA has promulgated several rules, including the 2001 rule setting up the framework for advisory committees throughout the executive branch of the Federal Government. GSA's rule includes detailed requirements for advisory committees along with appendices that contain key points and principles answering frequently asked questions on Federal advisory committees.

In addition, FEMA, as a part of the Department of Homeland Security (DHS), follows the policies of DHS. FEMA was an independent agency when it promulgated its rule in 1980, but became part of DHS in 2003.[14] DHS has an internal directive governing committee management; that directive is available on the web at *http://www.dhs.gov/xlibrary/assets/foia/mgmt_directive_2300_committee_management.pdf.* FEMA follows the DHS directive for the management of its advisory committees. This removal of part 12 reflects FEMA's existing practice of following GSA's regulations and DHS policies, rather than the obsolete part 12 regulations.

III. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires an agency to publish a rule for public comment prior to implementation. 5 U.S.C. 553. The APA, however, provides an exception to this requirement for rules of agency procedure or practice. 5 U.S.C. 553(b)(3)(A). FEMA's removal of 44 CFR part 12 is related to FEMA's internal procedures. This rule addresses the internal procedures that FEMA uses for advisory committees, and it is limited to the requirements on FEMA for setting up and administering FACA committees. This rule falls within the APA's exception for rules of agency procedure or practice.

B. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. As explained in the background section, this rule is a removal of an obsolete part of 44 CFR. It will make no substantive changes to FEMA policies and procedures. This rule imposes no regulatory costs on the public. FEMA reviewed its regulations and determined that part 12 is outmoded. Therefore, FEMA has decided that it should repeal its advisory committee regulations and rely on the GSA rule and DHS guidance.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 . . ., or any other law, to publish general notice of proposed rulemaking for any proposed rule[.]'' 5 U.S.C. 603(a). Accordingly, an RFA is not required when a rule is exempt from notice and comment rulemaking. FEMA has determined that this rule is exempt from notice and comment rulemaking. Therefore, an RFA analysis under 5 U.S.C. 603 is not required for this rule.

D. Unfunded Mandates Reform Act

FEMA has not issued a notice of proposed rulemaking for this regulatory action; therefore, the provisions of the Unfunded Mandates Reform Act of 1995, as amended, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, do not apply to this regulatory action.

E. Paperwork Reduction Act (PRA) of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163 (May 22, 1995) (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. FEMA has determined that this rulemaking does not require any collection of information under the Paperwork Reduction Act.

F. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR parts 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. Each agency can develop

[6] 45 FR 64179, Sep. 29, 1980.

[7] *See* 47 FR 13148, 13149–50, Mar. 29, 1982; 48 FR 44541, 44543, Sept. 29, 1983; 49 FR 33878, 33879, Aug. 27, 1984; 50 FR 40004, 40007, Oct. 1, 1985; 74 FR 15328, 15337–8, Apr. 3, 2009.

[8] 48 FR 19324, Apr. 28, 1983.

[9] 52 FR 45926, Dec. 2, 1987.

[10] 54 FR 41214, Oct. 5, 1989.

[11] 62 FR 31550, June 10, 1997.

[12] 65 FR 2504, Jan. 14, 2000.

[13] 66 FR 37728, July 19, 2001.

[14] Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002). *See also* 6 U.S.C. 313 (''There is in the Department [of Homeland Security] the Federal Emergency Management Agency.'')

categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major federal action subject to NEPA. However, FEMA has categorically excluded certain actions from the preparation of an EIS or EA, unless extraordinary circumstances exist. As applicable here, 44 CFR 10.8(d)(2)(ii) exempts the preparation, revision, and adoption of regulations from the preparation of an EA or EIS if the rule relates to an action that qualifies for a categorical exclusion. Administrative actions are categorically excluded from NEPA. 44 CFR 10.8(d)(2)(i). Because this is a rulemaking related to an administrative function and no extraordinary circumstances exist, no EA or EIS will be prepared.

G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' (65 FR 67249, Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials. FEMA has determined that this rulemaking will not have tribal implications.

H. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking does not have federalism implications.

I. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, national origin or income level.

No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

J. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 9, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

K. Congressional Review Act

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (''Congressional Review Act''), Public Law 104–121, 110 Stat. 847 (Mar. 29, 1996) (5 U.S.C. 801 *et seq.*). This rule is not a ''major rule'' within the meaning of the Congressional Review Act. It will not have an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 44 CFR Part 12

Advisory committees.

For the reasons discussed in the preamble, and under the authority of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* and the Federal Advisory Committee Act, 5 U.S.C. App., the Federal Emergency Management Agency amends 44 CFR Chapter I, subchapter A, as follows:

PART 12—[REMOVED AND RESERVED]

■ 1. Remove and reserve part 12, consisting of §§ 12.1 through 12.19.

Dated: March 6, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–05442 Filed 3–12–14; 8:45 am]

BILLING CODE 9111–19–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 538, and 552

[(Change 56); GSAR Case 2012–G501 Docket No. 2013–0006; Sequence No. 1]

RIN 3090–AJ36

General Services Administration Acquisition Regulation; (GSAR); Electronic Contracting Initiative (ECI)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to add a Modifications (Federal Supply Schedule) clause, and an Alternate I version of the clause that will require electronic submission of modifications under Federal Supply Schedule (FSS) contracts managed by GSA. The public reporting burdens associated with both the basic and Alternate I clauses are also being updated.

DATES: *Effective:* April 14, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202–357–9652 or email *Dana.Munson@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755. Please cite GSAR case 2012–G501.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a proposed rule with a request for public comments in the **Federal Register** at 78 FR 31879 on May 28, 2013, to amend the GSAR to add clause 552.243–81 Modifications (Federal Supply Schedule), and an Alternate I version of the clause that requires electronic submission of modifications for FSS contracts managed by GSA.

GSAR Clause 552.243–81, Modifications (Federal Supply Schedule) will replace 552.243–72, Modifications (Multiple Award Schedule), which was removed during the initial GSAR rewrite under GSAR proposed rule GSAR case 2006–G507 that was published in the **Federal Register** at 74 FR 4596 on January 26, 2009. Withdrawal of GSAR case 2006–G507 was published in the **Federal Register** at 77 FR 76446 on December 28, 2012.

The alternate version of the clause implements and mandates electronic submission of modifications, and only applies to FSS contracts managed by GSA. The alternate version of the clause links to GSA's electronic tool, eMod at *http://eoffer.gsa.gov/.* Use of eMod will streamline the modification submission process for both FSS contractors and contracting officers.

Use of eMod will establish automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster GSA's Rapid Action Modification (RAM), which allows contracting officers to process certain modification requests to the FSS contract (*e.g.,* administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30).

Current and new FSS contractors will be required to obtain a digital certificate in order to comply with submission of information via eMod. A digital certificate is an electronic credential that asserts the identity of an individual and enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate at the associated cost during that time. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of $119 per issuance and at renewals every two years. Having a digital certificate creates digital signatures which are verifiable. GSA has developed training on eMod, and obtaining a digital certificate. This information is posted on GSA's eOffer Web site at *http://eoffer.gsa.gov.*

The Department of Veterans Affairs (VA) does not have access to eMod, and is therefore not required to comply with the requirements of the Alternate I version of GSAR clause 552.238–81, Modifications (Federal Supply Schedule). VA will continue to utilize the basic version of the clause in management of their FSS contracts.

GSA is in the process of rewriting each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the **Federal Register** for comments. This rule, Electronic Contracting Initiative (Modifications), is included in the rewrite of GSAR Part 538, Federal Supply Schedule Contracting.

One respondent submitted a comment in response to the proposed rule. The comment is addressed in the Discussion and Analysis section below of this rule.

II. Discussion and Analysis

The General Services Administration reviewed the comment in the development of this final rule. The commenter requested GSA contact them regarding ''accountability of Chevron contract #1'', in which they have ''percent interest in these assets.'' GSA contacted the commenter to follow-up on their request. Based on the telephone discussion, it was determined that the commenter wanted GSA to address accountability within the partnership agreement. The comment received was outside the scope of this case; therefore, no changes were made to the final rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule will implement a streamlined, electronic process for submission and processing of modification requests pertaining to FSS contracts managed by GSA. However, small businesses will be positively impacted by this initiative in that the process for submitting information is simplified, more structured and easy to use, and processing time is significantly reduced. For example, submission of a paper modification request is often a labor intensive process that involves repeated exchanges of information via standard mail and/or facsimile. The electronic process will include controls to prevent submission of incomplete requests that require follow-up.

Contractors will be able to offer the latest products and services to the Federal Government faster and more often due to this streamlined submission process.

Contractors will be required to obtain a digital certificate in order to comply with the eMod requirement. The cost of the digital certificate will impose some economic impact on all contractors, both small and other than small, doing business under Federal Supply Schedule contracts managed by GSA. Therefore, a Final Regulatory Flexibility Analysis (FRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.238–81, Modifications (Federal Supply Schedule) back into the GSAR, and an alternate version of the clause that requires electronic submission of modifications for Federal Supply Schedule (FSS) contracts managed by GSA via eMod. The addition of the basic clause is an administrative change that reinstates a previous clause inadvertently removed from the GSAR. The alternate clause has never received public comment.

The alternate version of this clause mandates electronic submission of modifications through GSA's electronic tool, eMod. Use of eMod establishes automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster Rapid Action Modification (RAM), which allows contracting officers to process certain modifications (*e.g.,* administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30). eMod will streamline the process and result in modification actions being processed more timely and efficiently.

In addition to adding automated controls into the modification process, mandating the electronic submission of modifications will support several Federal Acquisition Service (FAS) initiatives that are currently underway to enhance the MAS Program's ability to transition to a completely electronic contracting environment. These initiatives include but are not limited to digitization of Multiple Award Schedule (MAS) contract files, Contracts Online, and the Enterprise Acquisition Solution (EAS).

eMod is consistent with the Electronic Signatures In Global and National Commerce Act (E–SIGN), enacted on June 20, 2000, and the Office of Management and Budget (OMB) Memoranda M–00–15, Guidance on Implementing the Electronic Signatures, dated September 25, 2000.

All of GSA's FSS contractors (19,000) will be required to obtain a digital certificate in order to comply with this requirement. Approximately 80 percent (15,200) GSA FSS contracts are held by small businesses. A digital certificate is an electronic credential that enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of $119 per issuance. The alternate version of this requirement does not apply to FSS contracts managed by the Department of Veteran Affairs (VA) because the VA does not utilize or have access to eMod.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 3090–0302, titled: Modifications (Multiple Award Schedule): GSAR Part Affected: 552.243–81.

List of Subjects in 48 CFR Parts 501, 538, and 552

Government procurement.

Dated: March 5, 2014.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 501, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

■ 2. Amend section 501.106 in the table, by adding in sequence, GSAR Reference ''552.238–81'' and its corresponding OMB Control Number ''3090–0302''.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 3. Amend section 538.273 by adding paragraph (b)(3) to read as follows:

538.273 Contract clauses.

* * * * *

(b) * * *

(3) *552.238–81, Modifications (Federal Supply Schedule).* Use Alternate I for Federal Supply Schedules that only accept electronic modifications.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 552.238–81 to read as follows:

552.238–81 Modification (Federal Supply Schedule).

As prescribed in 538.273(b), insert the following clause:

Modifications (Federal Supply Schedule) (APR 2014)

(a) *General.* The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of Modifications.* (1) Additional items/additional SINs. When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212–70, Preparation of Offer (Multiple Award Schedule), is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with FAR 552.211–78, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215–6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223–3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212–3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225–1, Buy American Act—Balance of Payments Programs—Supplies.

(2) *Deletions.* The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item.

(3) *Price Reduction.* The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–75. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) *Effective dates.* The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238–75.

(d) *Electronic File Updates.* The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238–75.

(e) *Amendments to Paper Federal Supply Schedule Price Lists.*

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February–April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic

document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of Clause)

Alternate I (APR2014). As prescribed in 538.273(b)(3), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (*http://eOffer.gsa.gov*), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center Web site (*http://vsc.gsa.gov*). If the electronic submissions standards and requirements information is updated at the Vendor Support Center Web site, Contractors will be notified prior to the effective date of the change.

[FR Doc. 2014–05409 Filed 3–12–14; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register
Vol. 79, No. 49
Thursday, March 13, 2014

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2012–BT–TP–0032]

RIN 1904–AD19

Energy Conservation Program: Test Procedures for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NOPR), the U.S. Department of Energy (DOE) proposes to revise its test procedures established under the Energy Policy and Conservation Act (EPCA) for packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs). The proposed amendments would specify an optional break-in period, explicitly require that wall sleeves be sealed, allow for the pre-filling of the condensate drain pan, require that ASHRAE Standard 16 be the sole method of test when measuring the cooling capacity for PTACs and PTHPs under ANSI/AHRI Standard 310/380–2004, and require testing with 14-inch deep wall sleeves and the filter option most representative of a typical installation. These updates fulfill DOE's obligation under EPCA to review its test procedures for covered equipment at least once every 7 years and either amend the applicable test procedures or publish a determination in the **Federal Register** not to amend them. DOE will hold a public meeting to discuss and receive comments on the issues presented in this notice.

DATES: DOE will hold a public meeting on April 28, 2014, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than May 27, 2014. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the NOPR for Test Procedures for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps, and provide docket number EERE–2012–BT–TP–0032 and/or regulatory information number (RIN) number 1904–AD19. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: PTAC-2012TP0032@ee.doe.gov.* Include the docket number EERE–2012–BT–TP–0032 and/or RIN 1904–AD19 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation,'' near the end of this document.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-TP-0032.* This Web page contains a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9590, or email *PTACs@ee.doe.gov.*

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.; ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).) Part C of Title III, which for editorial reasons was redesignated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317, as codified), establishes the Energy Conservation Program for Certain Commercial and Industrial Equipment. This equipment includes packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs), the subjects of today's notice. (42 U.S.C. 6311(1)(I))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for (1) certifying to DOE that their equipment complies with applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of the equipment. Similarly, DOE must use these test procedures to determine whether the equipment complies with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

In 42 U.S.C. 6314, EPCA sets forth the general criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b))

DOE is also required by EPCA to conduct an evaluation of test procedures every seven years for each class of covered equipment (including PTACs and PTHPs) to determine if an amended test procedure would more accurately or fully comply with the requirement to be reasonably designed to produce test results that reflect the energy efficiency, energy use, and operating costs during a representative average use cycle. DOE must either prescribe amended test procedures or publish a notice in the **Federal Register** regarding its determination not to amend test procedures. (42 U.S.C. 6314(a)(1)–(2))

Background

DOE's test procedure for PTACs and PTHPs is codified at Title 10 of the Code of Federal Regulations (CFR) section 431.96. The test procedure was established on December 8, 2006, in a final rule that incorporated by reference the American National Standards Institute's (ANSI) and Air-Conditioning, Heating, and Refrigeration Institute's (AHRI) Standard 310/380–2004, ''Standard for Packaged Terminal Air-Conditioners and Heat Pumps'' (ANSI/AHRI Standard 310/380). 71 FR 71340, 71371. ANSI/AHRI Standard 310/380–2004 is incorporated by reference at 10 CFR 431.95(a)(3) and it references (1) the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 16–1999 (RA2009), ''Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners'' (ASHRAE Standard 16); (2) ASHRAE Standard 58–1986 (RA2009), ''Method of Testing for Rating Room Air Conditioner and Packaged Terminal Air Conditioner Heating Capacity'' (ASHRAE Standard 58); and (3) ASHRAE Standard 37–1988, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (ASHRAE Standard 37).

On May 16, 2012, DOE published a final rule for commercial heating, air-conditioning, and water-heating equipment (ASHRAE equipment), which included amendments to the test procedure for PTACs and PTHPs. These amendments incorporated a number of sections of ANSI/AHRI Standard 310/380 by reference. 77 FR 28928, 28990. In today's rulemaking, DOE is evaluating test procedures for PTACs and PTHPs as required by 42 U.S.C. 6314(a)(1).

On February 22, 2013, DOE published a notice of public meeting and availability of framework document to consider energy conservations standards rulemaking for PTACs and PTHPs. 78 FR 12252. In the framework document, DOE sought comments on issues pertaining to the test procedure for PTACs and PTHPs, including equipment break-in, wall sleeve sealing, pre-filling the condensate drain pan, barometric pressure correction, and differences between the test methods of ASHRAE Standard 16 and ASHRAE Standard 37. Comments received on these topics are discussed in section III.

On February 26, 2013, members of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) unanimously decided to form a working group to engage in a negotiated rulemaking effort on the certification of commercial heating, ventilation, and air conditioning (HVAC) equipment (10 CFR part 431, subparts D, E and F), water heating (WH) equipment (10 CFR part 431, subpart G), and refrigeration equipment (10 CFR part 431, subpart C) (Working Group). A notice of intent to form the Commercial Certification Working Group was published in the **Federal Register** on March 12, 2013, following which DOE received 35 nominations. 78 FR 15653. On April 16, 2013, the Department published a notice of open meeting that announced the first meeting and listed the 22 nominated individuals that were selected to serve as members of the Working Group, in addition to two members from ASRAC, and one DOE representative. 78 FR 22431. Following the meeting, the Working Group published a set of recommendations, and DOE issued the Certification of Commercial HVAC, WH, and Refrigeration Equipment NOPR (Certification of Commercial Equipment NOPR) on February 7, 2014, summarizing the Working Group's recommendations. 79 FR 8886. The group proposed a number of test procedure items for PTACs and PTHPs, including proposals for (1) a standardized wall sleeve to be used during testing and (2) a standardized filter to be used during testing, both of which are discussed in today's NOPR.

DOE considers the activity initiated by this proposed rule sufficient to satisfy the statutory requirement that

DOE must review its test procedures for all covered equipment, including PTACs and PTHPs, at least once every 7 years and either amend the applicable test procedures or publish a determination in the **Federal Register** not to amend them. (42 U.S.C. 6314(a)(1))

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to amend the test procedures for PTACs and PTHPs in 10 CFR 431, Subpart F, to specify an optional break-in period, explicitly require that wall sleeves be sealed, allow for the pre-filling of the condensate drain pan, require that the cooling capacity for PTACs and PTHPs be determined by testing pursuant to ASHRAE Standard 16, and require testing with 14-inch deep wall sleeves and the filter option most representative of a typical installation.

The proposed amendments would explicitly allow PTAC and PTHP manufacturers the option of using a break-in period (up to 20 hours) before conducting the test procedure. In this regard, DOE proposes adding ANSI/AHRI Standard 310/380–2004 to the list of commercial air-conditioner standards at 10 CFR 431.96(c), which currently provides an optional break-in period of up to 20 hours for other commercial air-conditioner equipment types. The proposal would also require any PTAC or PTHP manufacturer that elects to use a break-in period to certify the duration of the break-in period it used for each basic model. DOE proposes that, as part of the set-up for testing, testers seal gaps between wall sleeves and the test facility dividing wall. This would require the PTAC or PTHP wall sleeve to be sealed per manufacturer specifications or a standard sealing method.

DOE proposes to allow the pre-filling of the condensate drain pan with water before running the DOE test procedure. This proposed amendment would allow the unit to reach steady state more quickly, which would decrease the burden and cost of testing.

DOE proposes to modify the test procedure to require ASHRAE Standard 16 as the test method for measuring the cooling capacity of PTACs and PTHPs. DOE would remove all references to ASHRAE Standard 37 as an allowable method of test.

DOE proposes to require testing using a 14-inch deep wall sleeve and only one filter option, which would be the most typical filter option that is shipped with the tested unit. These proposed amendments would remove testing variability resulting from the use of non-standard equipment.

DOE does not believe that these proposed changes to the PTAC and PTHP test procedure would result in any additional burden to manufacturers or result in any changes to the energy efficiency of current equipment. Rather, the proposed changes would provide additional clarification regarding how the DOE test procedure should be conducted.

III. Discussion

A. Break-In Duration

Break-in, also called run-in, refers to the operation of equipment prior to testing to cause preliminary wear, which may improve measured performance. DOE understands that many labs commonly incorporate a break-in period before the start of efficiency tests for air conditioning equipment. DOE's May 16, 2012 final rule for Small, Large, and Very Large Commercial Package Air Conditioners and Heat Pumps (ASHRAE equipment), 77 FR 28928, 28991, added a specification in the test procedure that allows an optional break-in period of up to 20 hours for many types of commercial air conditioning and heating equipment and requires that manufacturers record the duration of the break-in period. However, these amendments do not apply to PTACs or PTHPs.

DOE is aware that the time required to achieve sufficient break-in (for stabilizing equipment performance) may depend on ambient temperature. Generally, the break-in process is conducted outside the test chamber at room temperature conditions (*i.e.,* 65–85 °F). However, conducting break-in in the test chamber at elevated ambient temperatures (*i.e.,* 95 °F outdoor/80 °F indoor) may reduce the time required to achieve break-in. Using the test chamber for break-in would likely increase the expense of testing significantly because it would increase the amount of time that a test unit is in the test chamber. DOE asked for comment on this issue in the framework document published on February 22, 2013. 78 FR 12252.

In response, AHRI and Goodman stated that DOE should allow for an optional break-in period at non-specified ambient conditions for PTAC and PTHP testing, but did not specify a maximum duration. (AHRI, No. 11 at p. 2; Goodman, No. 13 at p. 1) [1] The California Investor-Owned Utilities (CA IOUs, which consists of the Pacific Gas and Electric Company (PG&E), the Southern California Gas Company (SCGC), the San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE)) stated that DOE should allow an optional break-in period with a maximum duration of 20 hours, as allowed in the ASHRAE equipment final rule. (CA IOUs, No. 12 at pp. 1–2) AHRI and Goodman stated that they do not have any data to show how the length of break-in time specifically affects PTAC or PTHP performance; however, Goodman did state that it has test data for residential air conditioning systems that indicate that system performance can improve by ''several percentage points over a 72 hour period.'' AHRI and Goodman further stated that any manufacturer that elects to use the optional break-in period for AHRI's certification testing must cover the cost of the break-in period. (AHRI, No. 11 at p. 2; Goodman, No. 13 at p. 1) AHRI also stated that breaking-in the equipment in the testing lab may cost around $1500 per 8-hr shift, whereas the only cost of break-in outside the test lab is the labor required for set-up and the electricity needed to operate the equipment. (AHRI, No. 11 at p. 2)

DOE has concluded that allowing for an optional break-in period will provide manufacturers more flexibility to produce test results that more accurately reflect energy efficiency of basic models in a manner that is representative of their performance without adding significant testing costs and burdens on the manufacturers. DOE understands that using a break-in period will generally improve the measured efficiency of a product by allowing moving parts (such as compressor mating surfaces) to wear-in to improve efficiency. DOE also concludes that the use of a break-in period should be at the manufacturer's discretion. Therefore, DOE proposes adding ANSI/AHRI Standard 310/380 to the list of commercial air-conditioner standards at 10 CFR 431.96(c), which would provide an optional break-in period of up to 20 hours. DOE already allows manufacturers of other commercial air-conditioner equipment the option of a break-in period not to exceed 20 hours, and this change would extend this allowance to manufacturers of PTACs

[1] A notation in this form provides a reference for information that is in the docket of DOE's ''Energy Conservation Program for Certain Commercial and Industrial Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps'' (Docket No. EERE–2012–BT–STD–0029), which is maintained at *www.regulations.gov.* This notation (AHRI, No. 11 at p. 2) indicates that the statement preceding the reference is found in document number 11 in the docket for the packaged terminal air conditioner and packaged terminal heat pump test procedure rulemaking, and appears at page 2 of that document.

and PTHPs. DOE has not found evidence that break-in periods exceeding 20 hours provide additional efficiency improvements for a PTAC or PTHP.

In addition, DOE is proposing a reporting requirement so that manufacturers would certify the duration of the break-in period used during that testing conducted to support the development of the certified ratings. As such, DOE is proposing to modify the certification requirements for PTACs and PTHPs that were proposed on February 14, 2014, 79 FR 8886, 8900, to require the manufacturer to include the break-in period in the certification report. DOE seeks comment on this proposal. Please note that a manufacturer must maintain records underlying its certified rating, which would reflect this optional break-in period duration pursuant to 10 CFR 429.71. DOE also notes that ratings derived from an alternative efficiency determination method (AEDM) would include a break-in period only if the test data underlying the AEDM also included a run-in period. As background. AEDMs are computer modeling or mathematical tools that predict the performance of non-tested basic models. They are derived from mathematical models and engineering principles that govern the energy efficiency and energy consumption characteristics of a type of covered equipment.

If commenters support longer break-in times, DOE requests data demonstrating that break-in periods longer than 20 hours make a significant impact on efficiency measurements for this equipment type. This is identified as issue 1 in section V.E, ''Issues on Which DOE Seeks Comment.''

B. Wall Sleeve Sealing

PTACs and PTHPs are tested in a testing facility incorporating rooms, simulating indoor and outdoor ambient test conditions, that are separated by a dividing wall with an opening in which the test sample is mounted. In most cases, the test sample is placed in the opening, and any remaining gaps between the dividing wall and the wall sleeve around the unit are filled with insulating material. The gap between the test sample and the insulating material may also be sealed with duct tape.

ASHRAE Standard 16 states, ''The air conditioner shall be installed in a manner similar to its normal installation'' (Section 4.2.2). In normal practice, PTACs and PTHPs are installed within wall sleeves that are permanently installed and sealed to the external wall of a building. However, the set-up of the DOE test procedure does not allow for the permanent installation of the wall sleeves in the partition cavity. Thus, during testing, the wall sleeve is not necessarily air-sealed to the wall as it would be in a normal installation in the field. Air leakage between the outdoor and indoor rooms through gaps between the wall sleeve and the dividing wall can reduce the measured capacity and efficiency, which would contribute to test results unrepresentative of field operation. DOE asked for comment on this issue in the framework document. 78 FR 12252 (Feb. 22, 2013).

Goodman responded that it will always be a proponent of anything that is done to the test procedure to minimize the variability of testing among laboratories, including sealing the wall sleeve. (Goodman, Framework Public Meeting Transcript at p. 24) [2] Goodman noted that adding wall sleeve sealing requirements to the test procedure would reduce the variability of measured performance from one lab to another. (Goodman, No. 13 at p. 2) Goodman added that sealing the wall sleeve leaks would not add a significant amount of time to the total testing to be done. (Goodman, Framework Public Meeting Transcript at p. 24) The CA IOUs pointed to section 4.2.2 of ASHRAE Standard 16 (mentioned above), which they believe can be interpreted as a requirement for wall sleeves to be sealed with the test facility dividing wall. They also pointed out that guidance as to the level of sealing necessary for the wall sleeve can be found in section 7.7.4 of ANSI/AHRI Standard 310/380, which states, ''During the entire test, the measured air flow rate, L/s (ft3/min), leaking into the indoor portion shall be considered to be the infiltration rate through the equipment and shall not exceed 3.1 L/(s•m) (2 ft3/(min•ft)) at the perimeter of the wall sleeve where it normally projects through the wall.'' (CA IOUs, No. 12 at p. 2)

DOE agrees with Goodman's comments that sealing the wall sleeve would reduce the variability of testing among laboratories and would help produce test results that more accurately reflect the energy efficiency of PTACs and PTHPs. DOE notes that section 4.2.2 of ASHRAE Standard 16 does not specifically require the wall sleeve to be sealed to the wall. Section 7.7.4 of ANSI/AHRI Standard 310/380, as the CA IOUs pointed out, deals with air infiltration testing, both through the unit and around the unit (i.e., between the wall sleeve and the opening). Although this air flow is generally measured during tests, the DOE test procedure for PTACs and PTHPs does not require its measurement and reporting. Furthermore, this air flow includes infiltration both through the unit and between the wall sleeve and the test facility dividing wall opening, so it is not necessarily a good indicator of whether the wall sleeve seal is tight.

To improve the repeatability of PTAC and PTHP testing, DOE proposes to require that test facilities, when installing PTACs and PTHPs in the test chamber, seal all potential leakage gaps between the wall sleeve and the dividing wall. DOE seeks comments on the sealing of PTAC and PTHP wall sleeves to the test facility dividing wall, including whether the type or method of sealing (e.g., duct tape) should be specified, and whether a test could be developed that, with reasonably low test burden, could be performed to verify an adequate seal. This is identified as issue 2 in section V.E, ''Issues on Which DOE Seeks Comment.''

C. Pre-Filling Condensate Drain Pan

Most PTACs and PTHPs transfer the condensate that forms on the evaporator to a condensate pan in the unit's outdoor-side where the outdoor fan distributes the water over the air-inlet side of the condenser. This process results in evaporative cooling that enhances the cooling of the outdoor coil in air-conditioning mode. At the beginning of a test, there may be no water in the condensate pan. As the test progresses and the unit approaches an equilibrium state of operation, the condensate level in the drip pan will fill and stabilize at a constant level. It can take several hours to reach this steady state.

To accelerate the testing process, test facilities typically add water to the condensate pan at the beginning of the test rather than waiting for the unit to generate sufficient condensate to stabilize. The current test procedure does not indicate whether this practice is allowed during efficiency testing. DOE sought comment on this issue in the framework document. 78 FR 12252 (Feb. 22, 2013).

AHRI and Goodman recommended that the condensate pan be pre-filled with water prior to testing, and stated that any type of water would be acceptable for pre-filling. (AHRI, No. 11

[2] A notation in the form ''Scotsman, Public Meeting Transcript at p. 26'' identifies a comment that DOE has received during a public meeting and has included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by Scotsman; (2) transcribed from the public meeting; and (3) appearing on page 26 of that document.

at p. 3; Goodman, No. 13 at p. 2) AHRI stated that achieving steady state conditions with a pre-filled pan takes 2–4 hours, with actual testing taking an additional 2 hours. If the pan is not prefilled, then the set-up and stabilization period will take approximately twice as long. (AHRI, No. 11 at p. 3) Goodman estimated that roughly 1 to 2 hours would be saved from pre-filling the condensate pan. Goodman added that the lab should document how much water was added to the pan, the water-source, and its temperature. Goodman also suggested that the water added be approximately 50 °F to optimize the time to reach equilibrium. (Goodman, No. 13 at p. 2)

The CA IOUs stated that distilled water should be used (as opposed to city water) because distilled water is similar in mineral content to the condensate that would normally fill the drain pan. (CA IOUs, No. 12 at p.3) They also indicated that section 7.6.3 of ANSI/AHRI Standard 310/380 (condensate disposal test section) provides guidance for pre-filling the condensate drain pan: ''After establishment of the specified temperature conditions, the equipment shall be started with its condensate collection pan filled to the overflowing point and shall be operated continuously for 4 h after the condensate level has reached equilibrium.'' (CA IOUs, No. 12 at p. 2)

DOE agrees that pre-filling the condensate pan would not alter the measured results as compared with not pre-filling the condensate pan. DOE also recognizes that pre-filling the condensate pan may reduce the time for the unit to achieve steady-state by approximately 1–4 hours, which would reduce test lab expenses because the PTAC or PTHP would spend less time in the test chamber. While DOE understands that regular tap water may have minerals and dissolved solids that could affect the thermodynamic properties of the condensate, which could then affect the steady-state behavior of the PTAC or PTHP, DOE does not have information to indicate whether use of non-distilled water will have a measurable impact on the performance of the PTAC or PTHP during testing. Therefore, DOE's proposal does not include requirements that a specific water type be used to fill the pan.

Additionally, DOE does not have information to indicate whether the temperature of the water used to prefill the pan will impact the test result, but acknowledges that the condensate water temperature of the test will stabilize due to the equilibrium tolerance requirements in section 6.1.5 of ASHRAE Standard 16. Therefore, DOE's proposal does not include requirements that water at a specific temperature be used to fill the pan.

Section 7.6.3 of ANSI/AHRI Standard 310/380, which the CA IOUs cited as providing guidance for pre-filling the condensate pan, is part of the procedure for the condensate disposal test designed to ensure that condensate does not overflow the drain pan. This section is not part of the general cooling capacity test for PTACs and PTHPs, and does not contain guidance for condensate temperatures or water types.

DOE proposes to add a provision in its test procedures at 10 CFR 431.96 to allow manufacturers the option of pre-filling the condensate drain pan before starting the efficiency test. As indicated above, the provision would not set requirements regarding the water purity or the water temperature that is to be used. DOE seeks comments on pre-filling the condensate drain pan, including whether the type and/or temperature of the water used should be specified in the test procedure and/or recorded in the test data underlying the results. This is identified as issue 3 in section V.E, ''Issues on Which DOE Seeks Comment.''

D. ASHRAE Standard 16 vs. ASHRAE Standard 37

ANSI/AHRI Standard 310/380 indicates that either ASHRAE Standard 16–1999 (a calorimeter-based method) or ASHRAE Standard 37–1988 (a psychrometric-based method) may be used to determine cooling efficiency. The two test methods have significant differences that may influence test results, including whether outgoing evaporator air is allowed to recirculate back into the evaporator. Testing consistency of PTACs and PTHPs may be improved by requiring all efficiency tests to be conducted using only one of the two ASHRAE standards. On the other hand, such an approach may increase test burden, particularly for those manufacturers that currently use one particular test method (*e.g.,* manufacturers who do not have access to a calorimeter test chamber needed to conduct testing according to ASHRAE Standard 16). DOE asked for comment on this issue in the framework document. 78 FR 12252 (Feb. 22, 2013).

Goodman and AHRI both stated that there is an ongoing process to revise ASHRAE Standard 16 that will incorporate aspects of ASHRAE Standard 37. (AHRI, No. 11 at p. 2; Goodman, Framework Public Meeting Transcript at p. 29) Goodman stated that it uses both psychrometric and calorimeter methods for its performance testing. (Goodman, No. 13 at p. 2) AHRI stated that it conducts its cooling verification testing for PTACs and PTHPs only in calorimeter rooms in accordance with ASHRAE Standard 16. AHRI also stated that, despite the differences between the two test methods, the test results between the two methods correlate. (AHRI, No. 11 at p. 2) AHRI noted that ASHRAE Standard 16 is currently being revised, and the upcoming release of the standards would likely include both psychrometric and calorimeter testing methods. AHRI stated that, upon release of updated ASHRAE Standard 16, ANSI/AHRI Standard 310/380 will likely use ASHRAE Standard 16 as the sole test standard for cooling capacity. (AHRI, No. 11 at p. 2; AHRI, Framework Public Meeting Transcript at p. 28) Goodman also encouraged DOE to adopt the future revised version of ASHRAE Standard 16 as soon as it is completed, and when this occurs, remove references to ASHRAE Standard 37 from the DOE test procedure. (Goodman, No. 13 at p. 2) AHRI recommended that DOE specify either ASHRAE Standard 16 or ASHRAE 37 as the sole method for conducting cooling capacity tests. (AHRI, No. 11 at p. 2)

To investigate potential differences in results between the ASHRAE Standard 16 and ASHRAE Standard 37 test methods, DOE conducted some experimental testing on this issue using three PTAC units, one each from three distinct manufacturers. DOE tested all three units at a third-party testing lab under both ASHRAE Standard 16 and ASHRAE Standard 37, and the results can be directly compared since both standards allow for testing of the energy efficiency ratio (EER) at peak-load conditions. The test results showed that differences in the calculated EER between ASHRAE Standard 16 and ASHRAE Standard 37 ranged from 0.4 to1.0 Btu/h-W, depending on the unit. These results do not support a conclusion that the two methods of test generate consistent results.

DOE understands that there is an ongoing process to revise ASHRAE Standard 16 to incorporate psychrometric testing currently detailed in ASHRAE Standard 37. Upon release of the updated standard, DOE may consider updates to the DOE test procedure to reference the new standard, as recommended by AHRI and Goodman.

To standardize the testing of PTACs and PTHPs, DOE is proposing to require that only ASHRAE Standard 16 be used when conducting a cooling mode test for PTACs and PTHPs. DOE seeks comment on its proposal to designate

ASHRAE Standard 16 as the sole test method for determining cooling efficiency. Specifically, DOE is interested in the test burden on manufacturers of this designation, particularly given that all AHRI certification program testing is conducted using ASHRAE Standard 16. DOE also seeks information on whether there are PTAC or PTHP manufacturers that conduct a significant number of tests using ASHRAE Standard 37. This is identified as issue 5 in section V.E, ''Issues on Which DOE Seeks Comment.''

E. Wall Sleeve Size and Filter Requirements for Testing

Wall Sleeve Size

The DOE test procedure provides limited guidance on the type of wall sleeve that should be used during testing. Wall sleeves are used in PTAC and PTHP testing to provide an outer case for the main refrigeration components. In the field, the wall sleeves are often installed in the building, and the cooling/heating assembly slides into and out of this case. For standard size PTACs and PTHPs, the wall sleeve measures 42 inches wide and 16 inches high; however, there is no standardized depth.

Some manufacturers offer extended wall sleeves in a variety of depths (up to 31 inches) that can be used with any of their standard size PTACs or PTHPs. DOE believes that the use of varying test sleeve depths can affect measured test results, due to the differences in airflow and fan performance. DOE's test procedure, in section 4.3 of ANSI/AHRI Standard 310/380, provides some limited guidance about the wall sleeve that should be used during testing; it states that ''standard equipment shall be in place during all tests, unless otherwise specified in the manufacturer's instructions to the user.'' However, there currently is no guidance for units where multiple test sleeves might be acceptable.

DOE's survey of wall sleeve sizes on the market showed that the most common wall sleeve depth is 14 inches. While DOE has no data indicating the impact of testing with a maximum-depth sleeve as opposed to a standard-depth sleeve, DOE expects that there may be an incremental reduction in efficiency associated with use of a sleeve as deep as 31 inches. The Working Group discussed the issue of varying wall sleeve sizes and voted to adopt the position that units should be tested using a standard 14 inch sleeve (Docket No. EERE–2013–BT–NOC–0023, No. 53, pg. 17). Based on this information, DOE proposes to add a provision to 10 CFR 431.96 to require testing using a wall sleeve with a depth of 14 inches (or the wall sleeve option that is closest to 14 inches in depth that is available for the basic model being tested). This is consistent with the recommendation by the Working Group.

Filter Requirements

The DOE test procedure provides limited guidance on the type of filter that should be used during testing, and DOE has investigated the issue of testing with standard filters versus high-efficiency filters. PTACs or PTHPs generally ship with a filter to remove particulates from the indoor airstream. There is currently no description in the DOE test procedure of the type of filter to be used during testing. While some PTACs and PTHPs only have one filter option, some PTACs and PTHPs are shipped with either a standard filter or a high efficiency filter. A high efficiency filter will impose more air flow restriction, which can incrementally decrease air flow and the capacity or efficiency of the unit.

DOE considered whether to specify a particular MERV filter efficiency for use with the test, such as MERV–2 or MERV–3 levels of filtration. However, DOE noted that the filter efficiencies offered in PTACs and PTHPs are generally not specified using a standard metric. Furthermore, some PTACs are sold with higher-efficiency ''standard-option'' filters than others. Moreover, verification that the filter used in the test complies with any such requirement would not be possible without implementation of standardized requirements for labeling of filters and reporting of filter efficiencies and/or adopting a filter efficiency test as part of the test procedure, all of which would impose additional burden. The Working Group was also aware of this issue, and also discussed the issue of varying air filter efficiency. The Working Group voted to adopt the position that units should be tested ''as shipped'' with respect to selecting a filter option (Docket No. EERE–2013–BT–NOC–0023, No. 53, pg. 16).

Consistent with the Working Group's recommendations, DOE proposes to add a provision to 10 CFR 431.96 to require testing using the standard or default filter option that is shipped with most units. For those models that are not shipped with a filter, DOE proposes to require the use of an off-the-shelf MERV–3 (minimum efficiency reporting value) filter for testing.

DOE seeks comment on these proposals and whether there are any PTACs or PTHPs that cannot be tested using a 14 inch deep wall sleeve. DOE also seeks comment on whether a MERV–3 filter is appropriate for testing PTACs and PTHPs that do not ship with filters. These have are identified as issues 7 and 8 in section V.E, ''Issues on Which DOE Seeks Comment.''

F. Barometric Pressure Correction

The DOE test procedure, in Section 6.1.3 of referenced ASHRAE Standard 16, allows for adjustment of the capacity measurement based on the tested barometric pressure: ''The capacity may be increased 0.8% for each in. Hg below 29.92 in. Hg.'' Theoretically, air is less dense at higher altitudes where the barometric pressure is lower. As a result, air mass flow generated by fans and blowers is less at higher altitudes, which may decrease the measured cooling capacity due to reduced air flow over the coils. However, there are other competing effects that may negate this decrease. DOE requested detailed test data showing the relationship of capacity to barometric pressure in the framework document. 78 FR 12252 (Feb. 22, 2013).

Goodman stated that it did not have data showing the relationship between barometric pressure and cooling capacity but mentioned that AHRI Standard 550–2011 (''Performance Rating of Water-Chilling and Heat Pump Water-Heating Packages Using the Vapor Compression Cycle'') has a normative appendix (Appendix F) that uses a barometric pressure adjustment and that the ASHRAE Standard Project Committee is considering adopting the AHRI 550 calculation in the revised ASHRAE Standard 16. Goodman also commented that barometric pressure should be used in performing capacity calculations for PTACs and PTHPs. (Goodman, No. 13 at p. 2)

Because DOE has not received any data to support the removal of the barometric pressure correction from the DOE test procedure, DOE is not proposing to amend or remove this provision. DOE seeks comments or data on the barometric pressure correction specifically used for PTACs and PTHPs. This is identified as issue 4 in section V.E, ''Issues on Which DOE Seeks Comment.''

G. Part-Load Efficiency Metric and Varying Ambient Conditions

The current DOE test procedure for PTACs and PTHPs measures cooling and heating efficiency in terms of EER and coefficient of performance (COP), respectively. Both of these metrics measure the efficiency of the unit

running steadily at the maximum cooling or heating output settings.

The Appliance Standards Awareness Project (ASAP) raised the issue that current efficiency metrics do not capture part load performance and, for that reason, do not properly reflect the benefits of technologies such as variable speed compressors that could save significant energy in the field due to improvement in part load efficiency. (ASAP, Framework Public Meeting Transcript at p. 35) ASAP and the American Council for an Energy-Efficient Economy (ACEEE) jointly encouraged DOE to develop a test procedure that captures part-load efficiency in order to better represent the energy efficiency in the field. They suggested that DOE adopt a metric similar to integrated energy efficiency ratio (IEER), which measures efficiency at different compressor load points (100%, 75%, 50%, and 25% of full capacity).[3] (ASAP and ACEEE, No. 14 at p. 1) AHRI commented that PTACs and PTHPs are generally operated at full load most of the time and that it is not common practice in the field to operate the units at part load. (AHRI, Framework Public Meeting Transcript at p. 36)

The CA IOUs stated that the DOE test procedure should require the measurement and reporting of the performance of PTACs and PTHPs in a variety of ambient conditions to represent varying climate zones. (CA IOUs, No. 12 at p. 3) Southern Company Services (SCS) commented that if DOE starts looking into part-load efficiency metrics for PTACs and PTHPs, then DOE would need to consider climate issues in the metric, which would be a complex issue. (SCS, Framework Public Meeting Transcript at p. 37)

DOE is unaware of any data showing the time PTACs and PTHPs spend operating in part-load conditions versus full-load conditions. Likewise, DOE is unaware of any information that shows the amount of time that PTACs and/or PTHPs spend cycling their compressors when operating in conditions not requiring their full load. Likewise, DOE is not aware of any data showing the amount of time that PTHPs with defrost capabilities spend at different outdoor temperatures, specifically at 17 °F compared with that at 47 °F. These data would be needed to incorporate the lower temperatures into a part-load metric, as noted by the CA IOUs. Such data would be necessary as inputs to a part-load metric for PTACs and/or PTHPs.

DOE believes that the existing EER (full load) metric accurately reflects equipment efficiency during the year. However, DOE recognizes the importance of conducting the data collection outlined above to establish whether a part load metric is needed and to provide the necessary basis for developing such a metric. DOE will consider gathering relevant data to assist in a future test procedure rulemaking. However, DOE does not have sufficient information regarding part-load operation to establish such a test procedure at this time.

The CA IOUs also stated that the heating mode test method should include defrost mode operation and testing at both 47 °F and 17 °F to capture the effects of electric resistance heat. (CA IOUs, No. 12 at p. 3)

DOE notes that ASHRAE Standard 58 includes a test of the defrost operation for units that experience defrost during the standard rating test at the specified test conditions. This test is not currently included as part of the DOE test procedure. As stated above regarding part-load metrics, DOE will consider such testing to assist in a future test procedure rulemaking.

Ice Air, LLC (Ice Air) commented that DOE's current energy conservation standards fail to account for the economic, environmental, and energy impact of using electric heat in PTACs and PTHPs. It also stated that there should be a standardized methodology for measuring the impact of alternate heat sources (*e.g.,* hydronic or gas heat), and that the energy-efficiency impact of such heat sources should be accounted for in the DOE test procedure. (Ice Air, No. 9 at p. 1)

DOE notes that the heating coefficient of performance calculated using ANSI/AHRI Standard 310/380 does not include any energy consumed by supplementary heating sources at times when low outdoor temperatures require its use. It also does not include energy consumed by supplementary hydronic or gas heating. To incorporate the energy consumed by supplementary resistance heat would require changing the metric to a seasonal metric, which would require knowledge of national average heating load patterns for PTHPs as a function of ambient temperature–information which DOE does not have at this time.

DOE is not proposing to adopt either a part-load or seasonal efficiency metric for the cooling mode that considers part-load performance, or a seasonal efficiency metric for the heating mode that considers electric resistance heating for PTACs or PTHPs. DOE seeks comments regarding this conclusion, including any information regarding seasonal load patterns for PTACs and PTHPs in both cooling and heating modes. This is identified as issue 6 in section V.E, ''Issues on Which DOE Seeks Comment.''

H. Compliance Date of the Test Procedure Amendments

In amending a test procedure, EPCA directs DOE to determine to what extent, if any, the test procedure would alter the measured energy efficiency or measured energy use of a covered product. (42 U.S.C. 6314(a)(6)) If the amended test procedure alters the measured energy efficiency or measured energy use, the Secretary must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6314(a)(6))

The proposed test procedure amendments for PTACs and PTHPS do not contain changes that would materially alter the measured energy efficiency of equipment. Rather, most of the proposed changes represent clarifications that would improve the uniform application of the test procedures for this equipment. Any change in the rated efficiency that might be associated with these clarifications is expected to be de minimis.

DOE's test procedure proposals being considered in this notice would be effective 30 days after publication of the final rule in the **Federal Register**. Consistent with 42 U.S.C. 6314(d), any representations of energy consumption of PTACs and PTHPs must be based on any final amended test procedures 360 days after the publication of the test procedure final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

[3] The IEER metric was developed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) for Standard 90.1–2007. In Addenda from the 2008 Supplement to Standard 90.1–2007, ASHRAE replaced the integrated part load value (IPLV) metric for commercial unitary air conditioners and commercial unitary heat pumps with the IEER metric, effective January 1, 2010.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule prescribes test procedures that will be used to test compliance with energy conservation standards for the products that are the subject of this rulemaking. DOE has tentatively concluded that the proposed rule would not have a significant impact on a substantial number of small entities.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification for 333415, which applies to air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment, is 750. Searches of the SBA Web site [4] to identify manufacturers within these NAICS codes that manufacture PTACs and/or PTHPs did not identify any small entities that could be affected by this test procedure modification.

DOE expects the impact of the proposed rule to be minimal. The proposed rule would amend DOE's test procedures to specify an optional break-in period, explicitly require that wall sleeves be sealed to prevent air leakage, allow for the pre-filling of the condensate drain pan, require that the cooling mode be tested using only ASHRAE Standard 16, and require testing with 14-inch deep wall sleeves and the filter option most representative of a typical installation. These tests can be conducted in the same facilities used for the current energy testing of these products and do not require testing in addition to what is currently required. The break-in period is optional and may result in improved energy efficiency of the unit; the break-in is also generally conducted outside of the balanced-ambient calorimeter facility. DOE expects that manufacturers will require minimal time to plug in and run the PTACs and PTHPs, and will only incur the additional time for the break-in step if it is beneficial to testing. In this case, the cost will be minimal due to the nature of the testing and the fact that it is not conducted within the facility.

Material costs are expected to be negligible, as air sealing the wall sleeves can be accomplished with typically available lab materials, and there are no additional costs from specifying a particular wall sleeve and/or filter that typically comes with the unit. In addition, pre-filling of the condensate pan is expected to reduce test time by 2–4 hours, which would reduce testing costs by approximately $375–750 per test. DOE also believes that most manufacturers are already using ASHRAE Standard 16 because all AHRI testing is conducted using this method. Thus, such requirements for equipment and time to conduct tests (if necessary to recertify using ASHRAE Standard 16) would not be expected to impose a significant economic impact.

For these reasons, DOE certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of packaged terminal air conditioners and packaged terminal heat pumps must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for packaged terminal air conditioners and packaged terminal heat pumps, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including packaged terminal air conditioners and packaged terminal heat pumps. 76 FR 12422 (Mar. 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

In the Certification of Commercial Equipment NOPR issued on February 7, 2014, DOE proposed to revise and expand its existing regulations governing compliance certification for commercial HVAC, WH, and CRE equipment covered by EPCA. 79 FR 8886. Requirements for PTAC and PTHP manufacturers were included in the Certification of Commercial Equipment NOPR, and DOE sought comment on this proposed expansion of the existing information collection. 79 FR 8886. In today's NOPR, DOE is proposing to include the break-in period and the wall sleeve dimensions under the current certification requirements listed in 10 CFR 429.43. DOE does not believe that these additions to the certification requirements constitute a significant additional burden upon respondents, as they require the addition of two additional pieces of information on the existing certification report. DOE believes that the Certification of Commercial Equipment NOPR provides an accurate estimate of the existing burden on respondents. 79 FR 8886.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for packaged terminal air conditioners and packaged terminal heat pumps. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this

[4] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For

any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to amend the test procedure for measuring the energy efficiency of packaged terminal air conditioners and packaged terminal heat pumps is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in the following commercial standards: ANSI/AHRI Standard 310/380–2004 and ASHRAE Standard 16–1983 (RA 2009). The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=89.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this

information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE seeks comment on its proposal to add an optional break-in period to the test procedure (up to 20 hours) for PTACs and PTHPs, and whether the duration of the proposed break-in period is appropriate. If commenters support longer break-in times, DOE also requests data showing that break-in periods longer than 20 hours make a significant impact on efficiency measurements for this equipment type.

2. DOE seeks comments on the sealing of PTAC and PTHP wall sleeves to the test facility dividing wall, including whether the type or method of sealing should be specified in the test procedure, and whether a test has been developed that could be performed to verify that adequate elimination of air leakage has been achieved.

3. DOE seeks comments on its proposal to permit the pre-filling of the condensate drain pan, including whether the mineral content of the water or temperature of the water used would affect the measurement and/or whether these data should be recorded and documented as part of the test records underlying certification.

4. DOE seeks comments on its proposal to require testing using 14-inch deep wall sleeves and standard filters. DOE is also interested in whether there are any PTACs or PTHPs that cannot be tested with a 14-inch deep wall sleeve.

5. DOE also seeks comment on its proposal to require the use of MERV–3 filter for testing PTACs and PTHPs that do not ship with filters.

6. DOE seeks comments or data on the need for a barometric pressure correction for PTACs and PTHPs.

7. DOE seeks comments on its proposal to designate ASHRAE Standard 16 as the sole test method for measuring cooling efficiency for PTACs and PTHPs. Specifically, DOE is interested in the test burden on manufacturers resulting from this proposed requirement, and whether there are PTAC or PTHP manufacturers that currently conduct a significant number of tests using ASHRAE Standard 37.

8. DOE seeks comments on its proposal not to develop seasonal efficiency metrics that would evaluate part-load operation of PTACs and PTHPs or the impact of electric resistance heating in low ambient temperatures for PTHPs. DOE also seeks any information regarding seasonal load patterns for PTACs and PTHPs in both cooling and heating modes.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on March 6, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Amend § 429.43 by:

■ a. Adding paragraph (a)(1)(iii);

■ b. Removing in paragraph (b)(2) introductory text the word ''shall'' and adding in its place the word ''must''; and

■ c. Revising paragraphs (b)(2)(iii) and (iv).

The addition and revisions read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(1) * * *

(iii) For packaged terminal air conditioners and packaged terminal heat pumps, the represented value of cooling capacity shall be the average of the capacities measured for the units in the sample selected as described in paragraph (ii) of this section, rounded to the nearest 100 Btu/h.

* * * * *

(b) * * *

(2) * * *

(iii) Package terminal air conditioners: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), the rated cooling capacity in British thermal units per hour (Btu/h), the wall sleeve dimensions in inches (in), and the duration of the break-in period (hours).

(iv) Package terminal heat pumps: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/W–h)), the coefficient of performance (COP), the rated cooling capacity in British thermal units per hour (Btu/h), the wall sleeve dimensions in inches (in), and the duration of the break-in period (hours).

* * * * *

■ 3. Add § 429.134 to read as follows:

§ 429.134 Product-specific Enforcement Provisions.

(a)–(d) [Reserved].

(e) *Package terminal air conditioners and heat pumps.* (1) Verification of cooling capacity. The total cooling capacity of the basic model will be measured pursuant to the test requirements of part 431 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of cooling capacity certified by the manufacturer. The certified cooling capacity will be considered valid only if the measurement is within five percent of the certified cooling capacity.

(i) If the certified cooling capacity is found to be valid, that cooling capacity will be used as the basis for calculation of the EER and, if applicable, the COP energy conservation standard that applies to the given basic model.

(ii) If the certified cooling capacity is found to be invalid, the average measured cooling capacity will serve as the basis for calculation of the EER and, if applicable, COP energy conservation standard that applies to the given basic model.

(2) [Reserved].

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 5. Amend § 431.95 by:

■ a. Redesignating paragraph (c)(1) as (c)(3); and

■ b. Adding paragraphs (c)(1) and (2) to read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(c) * * *

(1) ASHRAE 16–1999, ''Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners,'' IBR approved for § 431.96.

(2) ASHRAE 58–1999, ''Method of Testing for Rating Room Air Conditioner and Packaged Terminal Air Conditioner Heating Capacity,'' IBR approved for § 431.96.

* * * * *

■ 5. Amend § 431.96 by revising paragraphs (b) and (c) and adding paragraph (g) to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) *Testing and calculations.* (1) Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in the fifth column of Table 1 of this section along with any additional testing provisions set forth in paragraphs (c) through (g) of this section, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in the fifth column of Table 1 of this section shall not be used.

(2) Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in the rightmost column of Table 1 of this section along with any additional testing provisions set forth in this section, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in the rightmost column of Table 1 of this section shall not be used.

(3) After [date 360 days after date of publication of the final rule in the **Federal Register**], any representations made with respect to the energy use or efficiency of packaged terminal air conditioners and heat pumps (PTACs and PHTPs) must be made in accordance with the results of testing pursuant to this section. Manufacturers conducting tests of PTACs and PTHPs after [date 30 days after date of publication of the final rule in the **Federal Register**] and prior to [date 360 days after date of publication of the final rule in the **Federal Register**], must conduct such test in accordance with either this table or § 431.96 as it appeared at 10 CFR part 431, subpart F, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2014. Any representations made with respect to the energy use or efficiency of such

packaged terminal air conditioners and heat pumps must be in accordance with whichever version is selected.

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Packaged Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER and COP	AHRI 340/360–2007 (omit section 6.3).	
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h	EER	AHRI 340/360–2007 (omit section 6.3).	
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).	Paragraph (e).
Large Commercial Packaged Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER and COP	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	
Very Large Commercial Packaged Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	See paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c), and (e).
		<65,000 Btu/h and <760,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	
Variable Refrigerant Flow Multi-split Systems.	AC	<760,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<760,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<17,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	≥17,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).

[1] Incorporated by reference, see § 431.95.

(c) *Optional break-in period.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method cited in Table 1.

* * * * *

(g) *Test Procedures for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps.* (1) The test method for testing packaged terminal air conditioners and packaged terminal heat pumps in cooling mode shall consist of application of the methods and conditions in AHRI 310/380–2004 sections 3, 4.1, 4.2, 4.3, and 4.4 (incorporated by reference; see § 431.95), and in ANSI/ASHRAE 16 (incorporated by reference; see § 431.95). Where definitions provided in AHRI 310/380–2004 overlap with the definitions provided in 10 CFR 431.92, the 10 CFR 431.92 definitions shall be used.

(2) The test method for testing packaged terminal heat pumps in heating mode shall consist of application of the methods and conditions in AHRI 310/380–2004 sections 3, 4.1, 4.2, 4.3, and 4.4 (incorporated by reference; see § 431.95), and in ANSI/ASHRAE 58 (incorporated by reference; see § 431.95). Where definitions provided in AHRI 310/380–2004 overlap with the definitions provided in 10 CFR 431.92, the 10 CFR 431.92 definitions shall be used.

(3) *Wall sleeves.* For packaged terminal air conditioners and packaged terminal heat pumps, the unit must be installed in a wall sleeve with a 14 inch depth if available. If a 14 inch deep wall sleeve is not available, use the available wall sleeve option closest to 14 inches in depth. The area(s) between the wall sleeve and the insulated partition between the indoor and outdoor rooms must be sealed to eliminate all air leakage through this area.

(4) *Optional pre-filling of the condensate drain pan.* For packaged terminal air conditioners and packaged terminal heat pumps, test facilities may add water to the condensate drain pan of the equipment under test (until the water drains out due to overflow devices or until the pan is full) prior to conducting the test method specified by AHRI 310/380–2004 (incorporated by reference, see § 431.95). No specific level of water mineral content or water temperature is required for the water added to the condensate drain pan.

(5) *Test Method for Standard Cooling Ratings.* For packaged terminal air conditioners and packaged terminal heat pumps, the ANSI/ASHRAE test

method used in tests shall be ANSI/ASHRAE 16 (incorporated by reference, see § 431.95).

(6) *Filter selection.* For packaged terminal air conditioners and packaged terminal heat pumps, the indoor filter used during testing shall be the standard or default filter option shipped with the model with the model. If a particular model is shipped without a filter, the unit must be tested with a level MERV–3 filter.

[FR Doc. 2014–05366 Filed 3–12–14; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Modified 10-Year Regulatory Review Schedule

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing, systematic review of all Federal Trade Commission rules and guides, the Commission announces a modified ten-year regulatory review schedule. No Commission determination on the need for, or the substance of, the rules and guides listed below should be inferred from the notice of intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details about particular rules or guides may be obtained from the contact person listed below for the rule or guide.

SUPPLEMENTARY INFORMATION: To ensure that its rules and industry guides remain relevant and are not unduly burdensome, the Commission reviews them on a ten-year schedule. Each year the Commission publishes its review schedule, with adjustments made in response to public input, changes in the marketplace, and resource demands.

When the Commission reviews a rule or guide, it publishes a notice in the **Federal Register** seeking public comment on the continuing need for the rule or guide as well as the rule's or guide's costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden.

The Commission posts information about its review schedule on its Web site [1] to facilitate comment about rules and guides. This Web site provides links in one location to **Federal Register** notices requesting comments, comment forms, and comments for rules and guides that are currently under review. The Web site also contains a continuously updated review schedule, a list of rules and guides previously eliminated in the regulatory review process, and the Commission's regulatory review plan.

Modified Ten-Year Schedule for Review of FTC Rules and Guides

For 2014, the Commission intends to initiate reviews of, and solicit public comments on, the following rules:

(1) Rules and Regulations under the Hobby Protection Act, 16 CFR Part 304. Agency Contact: Joshua Millard, (202) 326–2454, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave. NW., Washington, DC 20580.

(2) *Telemarketing Sales Rule,* 16 CFR Part 310. Agency Contact: Craig Tregillus, (202) 326–2970, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, 600 Pennsylvania Ave. NW., Washington, DC 20580.

(3) *Standards for Safeguarding Customer Information,* 16 CFR Part 314, which implements Sections 501 and 505(b)(2) of the Gramm-Leach-Bliley Act. Agency Contact: David Lincicum, (202) 326–2773, Federal Trade Commission, Bureau of Consumer Protection, Division of Privacy and Identity Protection, 600 Pennsylvania Ave. NW., Washington, DC 20580.

The Commission is currently reviewing 25 of the 65 rules and guides within its jurisdiction. The Commission is postponing review of the Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule], 16 CFR Part 433, from 2014 as previously scheduled until 2015.

A copy of the Commission's modified regulatory review schedule for 2014 through 2024 is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

Appendix

REGULATORY REVIEW

[Modified ten-year schedule]

16 CFR part	Topic	Year to review
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	Currently Under Review.
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	Currently Under Review.
239	Guides for the Advertising of Warranties and Guarantees	Currently Under Review.
240	Guides for Advertising Allowances and Other Merchandising Payments and Services [Fred Meyer Guides].	Currently Under Review.
259	Guide Concerning Fuel Economy Advertising for New Automobiles	Currently Under Review.
300	Rules and Regulations under the Wool Products Labeling Act of 1939	Currently Under Review.
301	Rules and Regulations under Fur Products Labeling Act	Currently Under Review.
303	Rules and Regulations under the Textile Fiber Products Identification Act	Currently Under Review.
305	Appliance Labeling Rule	Currently Under Review.
306	Automotive Fuel Ratings, Certification and Posting	Currently Under Review.
308	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 [Pay Per Call Rule].	Currently Under Review.
423	Care Labeling of Textile Wearing Apparel and Certain Piece Goods	Currently Under Review.
424	Retail Food Store Advertising and Marketing Practices [Unavailability Rule]	Currently Under Review.
425	Use of Prenotification Negative Option Plans	Currently Under Review.
429	Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations	Currently Under Review.
435	Mail or Telephone Order Merchandise	Currently Under Review.
455	Used Motor Vehicle Trade Regulation Rule	Currently Under Review.

[1] *http://www.ftc.gov/ftc/regreview/index.shtml.*

REGULATORY REVIEW—Continued

[Modified ten-year schedule]

16 CFR part	Topic	Year to review
500	Regulations under Section 4 of the Fair Packaging and Labeling Act	Currently Under Review.
501	Exemptions from Requirements and Prohibitions under Part 500	Currently Under Review.
502	Regulations under Section 5(c) of the Fair Packaging and Labeling Act	Currently Under Review.
503	Statements of General Policy or Interpretation [under the Fair Packaging and Labeling Act]	Currently Under Review.
700	Interpretations of Magnuson-Moss Warranty Act	Currently Under Review.
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	Currently Under Review.
702	Pre-Sale Availability of Written Warranty Terms	Currently Under Review.
703	Informal Dispute Settlement Procedures	Currently Under Review.
304	Rules and Regulations under the Hobby Protection Act	2014.
310	Telemarketing Sales Rule	2014.
314	Standards for Safeguarding Customer Information	2014.
315	Contact Lens Rule	2015.
316	CAN–SPAM Rule	2015.
433	Preservation of Consumers' Claims and Defenses [Holder in Due Course Rule]	2015.
456	Ophthalmic Practice Rules (Eyeglass Rule)	2015.
460	Labeling and Advertising of Home Insulation	2016.
682	Disposal of Consumer Report Information and Records	2016.
233	Guides Against Deceptive Pricing	2017.
238	Guides Against Bait Advertising	2017.
251	Guide Concerning Use of the Word "Free" and Similar Representations	2017.
410	Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets	2017.
18	Guides for the Nursery Industry	2018.
311	Test Procedures and Labeling Standards for Recycled Oil	2018.
436	Disclosure Requirements and Prohibitions Concerning Franchising	2018.
681	Identity Theft [Red Flag] Rules	2018.
24	Guides for Select Leather and Imitation Leather Products	2019.
453	Funeral Industry Practices	2019.
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2020.
255	Guides Concerning Use of Endorsements and Testimonials in Advertising	2020.
313	Privacy of Consumer Financial Information	2020.
317	Prohibition of Energy Market Manipulation Rule	2020.
318	Health Breach Notification Rule	2020.
432	Power Output Claims for Amplifiers Utilized in Home Entertainment Products	2020.
444	Credit Practices	2020.
640	Duties of Creditors Regarding Risk-Based Pricing	2020.
641	Duties of Users of Consumer Reports Regarding Address Discrepancies	2020.
642	Prescreen Opt-Out Notice	2020.
660	Duties of Furnishers of Information to Consumer Reporting Agencies	2020.
680	Affiliate Marketing	2020.
698	Model Forms and Disclosures	2020.
801	[Hart-Scott-Rodino Antitrust Improvements Act] Coverage Rules	2020.
802	[Hart-Scott-Rodino Antitrust Improvements Act] Exemption Rules	2020.
803	[Hart-Scott-Rodino Antitrust Improvements Act] Transmittal Rules	2020.
437	Disclosure Requirements and Prohibitions Concerning Business Opportunities	2021.
260	Guides for the Use of Environmental Marketing Claims	2022.
312	Children's Online Privacy Protection Rule	2022.
254	Guides for Private Vocational and Distance Education Schools	2023.
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2023.

[FR Doc. 2014–05263 Filed 3–12–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR 5360–P–01]

RIN 2502–AJ17

Federal Housing Administration (FHA): Handling Prepayments: Eliminating Post-Payment Interest Charges

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise FHA's regulations that allow an FHA-approved mortgagee to charge the mortgagor interest through the end of the month in which the mortgage is being paid. The proposed change would prohibit mortgagees from charging post-payment interest, allowing them instead to charge interest only through the date the mortgage is paid.

DATES: *Comment Due Date:* May 12, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban

Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments, by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410; telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHA's current regulations allow FHA-approved mortgagees to charge borrowers interest due for the entire month should prepayment occur on a date other than the installment due date, subject to certain notice requirements to the mortgagor (see 24 CFR 203.558). However, current industry practices for non-FHA insured loans no longer utilize post-payment interest charges. In general, mortgagors who obtain conventional financing through banks, savings banks, or mortgage companies that finance mortgages sold through Fannie Mae, Freddie Mac, and private-label mortgage-backed securities,[1] as well as mortgagors who obtain loans from private lenders that the Department of Veterans Affairs (VA) guarantees, are not required to pay interest for the full month in which prepayment occurs.[2]

The final rule of the Consumer Financial Protection Bureau (CFPB) entitled ''Ability-to-Repay and Qualified Mortgage Standards under the Truth and Lending Act (Regulation Z)'' (CFPB final rule), was first issued on the CFPB's Web page [3] and subsequently published in the **Federal Register** on January 30, 2013, at 78 FR 6408. The rule, which became effective January 10, 2014, broadly defines ''prepayment penalty'' in closed-end transactions as the ''charge imposed for paying all or part of the transaction's principal before the date on which the principal is due,'' thus including charges resulting from FHA's currently allowed monthly interest accrual amortization method (see 12 CFR 1026.32(b)(6)).[4] In recognition of the important role that FHA-insured credit plays in the current mortgage market, the CFPB final rule provides that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for FHA loans consummated before January 21, 2015. However, for all FHA loans closed on or after January 21, 2015, a post-payment interest charge as a result of the monthly interest accrual amortization method will be considered a prepayment penalty, making it necessary for FHA to amend its regulations (see 12 CFR 1026.32(b)(6)(i)).

II. This Proposed Rule

This proposed rule would eliminate the option provided to FHA-approved mortgagees to charge prepaying mortgagors post-payment interest payments under FHA's single family mortgage insurance program. The proposed regulatory change is responsive to the definition of ''prepayment penalty'' in the CFPB final rule. The CFPB final rule permits limited prepayment penalties for ''qualified mortgages'' (as that term is defined in the rule) during the first 36 months following consummation of the mortgage (see 12 CFR 1026.43(g)). Prepayment penalties are not, however, permitted for higher-priced mortgage loans, which include consumer credit transactions secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest

[1] See, e.g., *Freddie Mac Single-Family Seller/Servicer Guide, Chapter 51.19: Application of payments: Mortgage paid in full,* explaining that for FHA/VA and Section 502 GRH Mortgages, any notice of prepayment or entitlement to interest past the date of payment-in-full must be waived by the servicer on behalf of Freddie Mac, and *Fannie Mae Single Family Servicing Guide, Part III, 102.01: Additional Principal Payments,* explaining that a servicer may charge the borrower interest on the then outstanding mortgage loan balance up until the date the prepayment is applied.

[2] The VA currently authorizes prepayment penalties for partial prepayments made on other than an installment due date. Otherwise, the mortgagor has the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or $100, whichever is less. See 38 CFR 36.4811.

[3] See *http://files.consumerfinance.gov/f/201301_cfpb_final-rule_ability-to-repay.pdf.*

[4] Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) (Dodd-Frank Act), the Federal Reserve Board (Board) had responsibility for lenders' compliance with the Truth-in-Lending Act (TILA). (This responsibility was transferred to the CFPB in July 2011.) In a September 2009 interpretive letter to Secretary Donovan, Board staff advised that they had not addressed whether monthly interest accrual amortization is a prepayment penalty and, therefore, would not prohibit such practice without further review. (See *http://www.aba.com/Compliance/Documents/da4a00df3ffb4650b7c9154adbc1418aFedLtrtoHUD2009.pdf*) In a proposed rule published on September 24, 2010, at 75 FR 59539, the Board proposed to amend Regulation Z, which implements TILA and the Board's accompanying staff commentary. In this proposed rule, the Board stated that based on further review and analysis the monthly interest accrual amortization method should be treated as a prepayment penalty for TILA purposes. (See 75 FR 58586.) The CFPB's final rule on ability-to-pay continued the analysis that the Board provided in its September 24, 2010, proposed rule and categorized FHA's monthly interest accrual amortization method as a prepayment penalty, but not for FHA loans consummated before January 21, 2015. (See 78 FR 6445.) The CFPB offers examples of the monthly interest accrual amortization method at page 78 FR 6600. In its discussion at this page, the CFPB recognized that FHA would need rulemaking to change this practice and the amount of time needed to complete the rulemaking.

rate is set, by 1.5 or more percentage points for loans secured by a first lien on the dwelling or by 3.5 or more percentage points for loans secured by a subordinate lien on the dwelling (see 12 CFR 1026.43(g)(1)(i)(C)); or for loans that have an adjustable interest rate (see 12 CFR 1026.43(g)(1)(i)(A)).

While some FHA-insured single family mortgages would meet the requirements permitting limited prepayment penalties during the first 36 months following consummation of the mortgage, others would not. For mortgages for which limited prepayment penalties are permitted, the CFPB final rule also imposes an additional requirement that lenders that offer loans with prepayment penalties also offer loans without such penalties (see 12 CFR 1026.43(g)(3)). In order to maximize consistency among FHA-insured single family mortgage products, and provide the same protections for all borrowers, this proposed rule would prohibit prepayment penalties in all FHA-insured single family mortgages.

The proposed rule would revise the regulations in 24 CFR 203.558, which currently provide that, if prepayment is offered on other than an installment due date, the mortgagee may require payment of interest up to the date of the next installment due date. The proposed rule would revise this section to provide that, with respect to FHA-insured mortgages closed on or after the effective date of these proposed regulatory amendments, and notwithstanding the terms of the mortgage, the mortgagee shall accept a prepayment at any time and in any amount and shall not charge a post-payment charge. The proposed rule would require that monthly interest on the debt be calculated on the actual unpaid principal balance of the loan as of the date the prepayment is received and not as of the next installment due date.

Under the proposed rule, post-payment charges using the monthly interest accrual amortization method are not considered prepayment penalties for FHA-insured mortgages closed prior to the effective date of these proposed regulatory changes. This proposed rule retains the current provisions of § 203.558 pertaining to the handling of prepayments for such mortgages, but consolidates the provisions in a revised paragraph (b) to § 203.558 and slightly revises their wording to reflect the fact that their applicability is limited to FHA-insured mortgages closed prior to the final rule's effective date. Consistent with current regulations applicable to mortgages insured on or after August 2, 1985, the proposed rule does not permit mortgagees to require advance notice of prepayment.

In addition to the proposed amendments to § 203.558, HUD also proposes to make two technical conforming changes to the regulations in 24 CFR part 203. First, HUD proposes to amend § 203.9, which requires a mortgagee to provide written notice to the mortgagor at or before closing regarding the accrual of interest on the mortgage loan following a prepayment. Since once this rule becomes effective it will prohibit such interest accruals, the requirements of § 203.9 will not be applicable to loans closed on or after the effective date of the final rule. Second, HUD proposes to revise § 203.22(b), which currently requires that ''the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part on any installment due date . . . .'' For consistency with the proposed revision to § 203.558, this language would be amended to reference the mortgagor's ability to ''prepay the mortgage in whole or in part at any time and in any amount.''

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), agencies must determine whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This document was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

As discussed in this preamble, this rule proposes to prohibit mortgagees from charging post-payment interest and allow them to charge interest only through the date the mortgage is paid. The CFPB final rule broadly defines ''prepayment penalty'' in closed-end transactions as the ''charge imposed for paying all or part of the transaction's principal before the date on which the principal is due,'' thus including charges from post-payment interest. HUD has prepared an economic analysis assessing costs and benefits of this proposal to eliminate post-payment interest. HUD's full analysis can be found at *www.regulations.gov*. A summary of HUD's analysis follows:

A. Transfers/Revenue Effects

HUD's proposal to implement its own post-payment interest rule prior to the date of the FHA loans being bound by the prepayment penalty provisions of the CFPB final rule would result in an estimated transfer of $13 million from those borrowers who would not prepay mid-month under the current rule to those who would. The earlier in the month that a borrower prepays, the greater the transfer under the proposed rule relative to the current one. The beneficiaries of this transfer would also pay the higher prices for FHA-insured loans, however, and, therefore, the amount of the transfer would be reduced. However, this estimate assumes that the proposed rule is made final an entire year before the January 21, 2015, deadline for FHA to implement the CFPB final rule's prepayment penalty provisions, which is an overestimation. In addition, HUD's proposal to eliminate post-payment interest entirely would result in an estimated annual transfer of $37 million, which is a top threshold estimate. The actual annual transfer is expected to be less. See HUD's full analysis for further explanation.

B. Benefits and Costs

Under the proposed rule, borrowers will experience costs and benefits. Borrowers who would pay post-payment interest under the current rule can expect to pay a slightly higher rate for FHA-insured financing, but they would also receive full benefit from lower interest costs when they prepay later, in most cases more than offsetting the cost of the higher rate. Borrowers who currently avoid paying post-payment interest under the current rule, however, will face the slightly higher rate for FHA-insured financing and receive no offsetting post-payment interest savings.

FHA borrowers will no longer have to delay a closing or prepayment because of the cost of prepaying at a date earlier than the next installment due date. However, a very small percentage of borrowers may be dissuaded or

otherwise excluded from taking up an FHA loan. This may occur because in the borrowers' current circumstances the increase in the immediate costs of the loan (whether expressed as an increase in points and fees or an increase in the monthly interest rate) figuratively puts the product out of reach. It may also occur because it makes another loan product more attractive.

This proposed rule will force FHA lenders to bear the entire cost of interest from the prepayment date to the end of the month. However, HUD expects that lenders will simply look elsewhere to recoup these costs, charging a higher interest rate or servicing fee differential on all FHA-insured loans than they might have otherwise charged.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As noted above in this preamble, even without rulemaking by HUD, the circumstances in which a small entity could charge a prepayment penalty have been significantly limited by the CFPB final rule. The CFPB final rule implements the Dodd-Frank Act provisions that generally prohibit prepayment penalties except for certain fixed-rate, qualified mortgages where the penalties satisfy certain restrictions and the creditor has offered the consumer an alternative loan without such penalties. The CFPB final rule categorizes the post-payment interest charge resulting from FHA's monthly interest accrual amortization method as a prepayment penalty. Therefore, the use of post-payment interest charges on all FHA loans closed on or after January 21, 2015, will be considered prepayment penalties. This is true, irrespective of any economic impacts of the rule.

In any event, even if HUD were to issue a rule allowing prepayment penalties, the CFPB final rule requires that lenders that offer loans with prepayment penalties also offer loans without such penalties (see 12 CFR 1026.43(g)(3)). As of January 21, 2015, all small lenders [5] would have to be prepared to offer loans without prepayment penalties and, therefore, be prepared to bear, or transfer, the cost of interest (or more) from the prepayment date to the end of the month. HUD expects that, with or without this rulemaking, lenders will simply look elsewhere to recoup these costs, charging a higher interest rate or servicing fee differential on all FHA-insured loans than they might have otherwise charged.

Under the proposed rule, those borrowers who would pay post-payment interest under the current rule would be expected to pay a slightly higher rate for FHA-insured financing, but they would also receive full benefit from lower interest costs when they prepay later, in most cases more than offsetting the cost of the higher rate. Borrowers who currently avoid paying post-payment interest under the current rule, however, face the slightly higher rate for FHA-insured financing and receive no offsetting post-payment interest savings. Since HUD expects the increase in the pricing of FHA-insured loans under the proposed rule to be set to compensate lenders for the loss of post-payment interest from borrowers, the primary effect of the proposed rule is a transfer of funds from those who would not prepay mid-month under the current rule to those who would.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

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

Unfunded Mandates Reform Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Homes is 14.117.

Paperwork Reduction Act

This proposed rule reduces information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The cost savings of this proposed rule, in time, are estimated to be 0.0036 burden hours.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD proposes to revise 24 CFR part 203 as follows:

[5] Of HUD's 1,459 supervised lenders, 598 are considered, by HUD, to be ''small supervised lenders.'' HUD defines ''small supervised lenders'' as those depository institutions regulated by the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration that have a depository asset base of less than $500 million.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, and 1717z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 2. Revise the last sentence of § 203.9 to read as follows:

§ 203.9 Disclosure regarding interest due upon mortgage prepayment.

* * * This paragraph shall apply to any mortgage executed after August 22, 1991, and before [effective date of the final rule to be inserted at the final rule stage].

■ 3. Revise § 203.22 paragraph (b) to read as follows:

§ 203.22 Payment of insurance premiums or charges; prepayment privilege.

* * * * *

(b) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time and in any amount. The mortgage shall not provide for the payment of any charge on account of such prepayment.

■ 4. Revise § 203.558, to read as follows:

§ 203.558 Handling prepayments.

(a) *Handling prepayments for FHA-insured mortgages closed on or after [effective date of the final rule to be inserted at the final rule stage].* With respect to FHA-insured mortgages closed on or after [effective date of the final rule to be inserted at the final rule stage], notwithstanding the terms of the mortgage, the mortgagee shall accept a prepayment at any time and in any amount. The mortgagee shall not require 30 days' advance notice of prepayment, even if the mortgage instrument purports to require such notice. Monthly interest on the debt must be calculated on the actual unpaid principal balance of the loan as of the date the prepayment is received, and not as of the next installment due date.

(b) *Handling prepayment for FHA-insured mortgages closed before [effective date of the final rule to be inserted at the final rule stage].* (1) With respect to FHA mortgages insured before August 2, 1985, if a prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the first day of the month following expiration of the 30-day notice period as provided in the mortgage, or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment. If the installment due date (the first day of the month) falls on a nonbusiness day, the mortgagor's notice of intention to prepay or the prepayment shall be timely if received on the next business day.

(2) With respect to FHA mortgages insured on or after August 2, 1985, but closed before [effective date of the final rule to be inserted at the final rule stage], the mortgagee shall not require 30 days' advance notice of prepayment, even if the mortgage instrument purports to require such notice. If the prepayment is offered on other than an installment due date, the mortgagee may refuse to accept the prepayment until the next installment due date (the first day of the month), or may require payment of interest to that date, but only if the mortgagee so advises the mortgagor, in a form approved by the Commissioner, in response to the mortgagor's inquiry, request for payoff figures, or tender of prepayment.

(3) If the mortgagee fails to meet the full disclosure requirements of paragraphs (b)(1) and (b)(2) of this section, the mortgagee may be subject to forfeiture of that portion of the interest collected for the period beyond the date that prepayment in full was received and to such other actions as are provided in part 25 of this title.

(c) *Mortgagee annual notice to mortgagors.* Each mortgagee, with respect to a mortgage under this part, shall provide to each of its mortgagors not less frequently than annually a written notice, in a form approved by the Commissioner, containing a statement of the amount outstanding for prepayment of the principal amount of the mortgage. With respect to FHA-insured mortgages closed before [effective date of the final rule to be inserted at the final rule stage], the notice shall describe any requirements the mortgagor must fulfill to prevent the accrual of any interest on the principal amount after the date of any prepayment. This paragraph shall apply to any outstanding mortgage insured on or after August 22, 1991.

Dated: February 21, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–05407 Filed 3–12–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–5650–N–06]

Native American Housing Assistance and Self-Determination Act of 1996: Negotiated Rulemaking Committee Third Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of meeting of negotiated rulemaking committee.

SUMMARY: This notice announces the third meeting of the negotiated rulemaking committee.

DATES: The meeting will be held on Wednesday, April 23, 2014, Thursday, April 24, 2014, and Friday, April 25, 2014. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5 p.m.

ADDRESSES: The meeting will take place at the Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing and Assistance and Self-Determination Act of 1996 (25 U.S.C. 4141 et seq.) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) program. The regulations governing the IHBG formula allocation are codified in subpart D of part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian

tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made.

On June 12, 2013 (78 FR 35178), HUD announced in the **Federal Register** the list of proposed members for the negotiated rulemaking committee, and requested additional public comment on the proposed membership. On July 30, 2013 (78 FR 45903), HUD announced the final list of committee members and announced the first meeting of the negotiated rulemaking committee. On August 27, 2013, and August 28, 2013, the first meeting of the negotiated rulemaking committee was held. HUD announced the second meeting of the negotiated rulemaking committee on September 4, 2013 (78 FR 54416). The second meeting was held on Tuesday, September 17, 2013, Wednesday, September 18, 2013, and Thursday, September 19, 2013.

II. Third Committee Meeting

The third meeting of the Indian Housing Block Grant Allocation Formula Negotiation Rulemaking Committee will be held on Wednesday, April 23, 2014, Thursday, April 24, 2014, and Friday, April 25, 2014. On each day, the session will begin at approximately 8:30 a.m., and adjourn at approximately 5 p.m. The meetings will take place at the Washington Hilton Hotel, 1919 Connecticut Avenue NW., Washington, DC 20009.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Future Committee Meetings

Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: March 5, 2014.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–05400 Filed 3–12–14; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0806; FRL–9905–17–Region 9]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from graphic arts operations and from surface preparation and cleaning operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 14, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0806, by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the on-line instructions.

2. Email: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov or email. www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: PCAPCD Rule 239, Graphic Arts Operations and PCAPCD Rule 240, Surface Preparation and Cleanup. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 19, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–05233 Filed 3–12–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2013–0068; 4500030114]

RIN 1018–AY56

Endangered and Threatened Wildlife and Plants; Revision of Critical Habitat for the Salt Creek Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the June 4, 2013, proposed revised designation of critical habitat for the Salt Creek tiger beetle *(Cicindela nevadica lincolniana)* under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Salt Creek tiger beetle, a draft environmental assessment (EA), and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, the draft EA, and the amended required determinations section. 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 28, 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 draft economic analysis and draft environmental assessment on the internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0068, at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/,* or by mail from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment by searching for FWS–R6–ES–2013–0068, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2013–0068; 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: Eliza Hines, Acting Field Supervisor, U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 203 West Second Street, Grand Island, NE 68801; by telephone (308–382–6468), or by facsimile (308–384–8835). 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 revised designation of critical habitat for the Salt Creek tiger beetle that was published in the **Federal Register** on June 4, 2013 (78 FR 33282), our DEA of the proposed designation, our draft environmental assessment, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Salt Creek tiger beetle;

(b) The amount and distribution of Salt Creek tiger beetle habitat; and

(c) What areas that were occupied at the time of listing (or are currently occupied) and that contain features essential for the conservation of the species should be included in the designation and why;

(d) 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;

(e) What areas not occupied at the time of listing are essential for the conservation of the species and why; and

(f) The amount of habitat needed to be occupied by Salt Creek tiger beetles in order to recover the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Salt Creek tiger beetle and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and the description of the environmental impacts in the draft environmental assessment is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, 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.

(8) 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.

(9) 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

33282) during the initial comment period from June 4, 2013, to August 5, 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 revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule, DEA, or draft EA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, DEA, and draft EA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0068, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule, the DEA, and the draft EA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2013–0068, at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/,* or by mail from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Salt Creek tiger beetle in this document. For more information on previous Federal actions concerning the Salt Creek tiger beetle, refer to the proposed revised designation of critical habitat published in the **Federal Register** on June 4, 2013 (FR 78 33282). For more information on the Salt Creek tiger beetle or its habitat, refer to the final listing rule published in the **Federal Register** on October 6, 2005 (70 FR 58335), which is available online at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/* or from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

We published a proposed rule to designate critical habitat for the Salt Creek tiger beetle on December 12, 2007 (72 FR 70716). On April 28, 2009, we published a revised proposed rule to designate critical habitat (74 FR 19167). A final rule designating approximately 1,933 acres (ac) (783 hectares (ha)) of critical habitat was published on April 6, 2010 (75 FR 17466). The Center for Native Ecosystems, the Center for Biological Diversity, and the Xerces Society (plaintiffs) filed a complaint on February 23, 2011, regarding designation of critical habitat for the species. A settlement agreement between the plaintiffs and the Service was reached on June 7, 2011, in which we agreed to reevaluate our designation of critical habitat.

In accordance with that agreement, on June 4, 2013, we published a proposed rule to revise our designation of critical habitat for the Salt Creek tiger beetle (78 FR 33282). We proposed to designate approximately 1,110 ac (449 ha) in four units located in Lancaster and Saunders counties in Nebraska as critical habitat. That proposal had a 60-day comment period, ending August 5, 2013. We will submit for publication in the **Federal Register** a final critical habitat designation for the Salt Creek tiger beetle on or before May 1, 2014.

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.

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; or implementation of a management plan. In the case of the Salt Creek tiger beetle, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Salt Creek tiger beetle due to protection from adverse modification or destruction of critical habitat. 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. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation.

Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

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 this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Salt Creek tiger beetle (IEc 2014). 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. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis of the proposed critical habitat designation for the Salt Creek tiger beetle, and this information is summarized in the narrative below.

Executive Orders 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. 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 the Salt Creek tiger beetle, first we identified, in the IEM dated December 6, 2013, probable incremental economic impacts associated with the following categories of activities: (1) Agriculture and livestock grazing; (2) restoration and conservation; (3) residential and commercial development; (4) water management and supply; (5) transportation activities, including bridge construction; and (6) utility activities. 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 the Salt Creek tiger beetle 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 this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In 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 the Salt Creek tiger beetle's critical habitat. Jeopardy is the standard that is used when conducting a section 7 consultation on a listed species; adverse modification is the standard used when conducting a consultation on critical habitat. The Salt Creek tiger beetle was listed in October 2005. Since that time, the jeopardy standard has been used for section 7 consultations for the species. Once critical habitat is designated, the adverse modification standard will also be used in addition to the jeopardy standard for section 7 consultations on the Salt Creek tiger beetle. Even though the Service recognizes differences in the standards between avoidance of destruction or adverse modification and jeopardy, the types of project modifications that would be recommended for the Salt Creek tiger beetle would remain the same given the extremely low numbers and small number of populations of the species. Thus, the DEA seeks to identify the

difference in jeopardy and adverse modification or the incremental difference in terms of the economic effects for this designation of critical habitat. 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 the Salt Creek tiger beetle includes the Rock Creek, Little Salt Creek, Oak Creek, and Haines Branch Creek units in Lancaster and Saunders counties (Table 1). Of these units, one (Little Salt Creek) is currently occupied by the Salt Creek tiger beetle and three (the Rock Creek, Oak Creek, and Haines Branch units) are unoccupied.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR SALT CREEK TIGER BEETLE

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Estimated quantity of critical habitat	Percent of critical habitat unit
Little Salt Creek Unit	City of Lincoln	40 ac (16 ha)	14
	Lower Platte South Natural Resources District	19 ac (8 ha)	7
	Nebraska Game & Parks Commission	41 ac (17 ha)	14
	The Nature Conservancy	29 ac (12 ha)	10
	Pheasants Forever	11 ac (4 ha)	4
	Private *	144 ac (58 ha)	51
	Subtotal	284 ac (115 ha)	
Rock Creek Unit	Nebraska Game & Parks Commission	152 ac (62 ha)	29
	Private *	374 ac (152 ha)	71
	Subtotal	526 ac (213 ha)	
Oak Creek Unit	Nebraska Department of Roads	30 ac (12 ha)	14
	City of Lincoln	178 ac (72 ha)	86
	Subtotal	208 ac (84 ha)	
Haines Branch Unit	BNSF Railway	7 ac (3 ha)	8
	City of Lincoln/State of Nebraska	45 ac (18 ha)	49
	Private	40 ac (16 ha)	43
	Subtotal	92 ac (37 ha)	
Total	City of Lincoln	263 ac (106 ha)	24
	Lower Platte South Natural Resources District	19 ac (8 ha)	1.7
	Nebraska Game & Parks Commission	193 ac (78 ha)	17.4
	Nebraska Department of Roads	30 ac (12 ha)	2.7
	BNSF Railway	7 ac (3ac)	0.6
	The Nature Conservancy	29 ac (12 ha)	2.6
	Pheasants Forever	11 ac (4 ha)	1.0
	Private *	558 ac (226 ha)	50.0
	Total	1,110 ac (449 ha)	

* Several private tracts are protected by easements.

In occupied habitat (Little Salt Creek Unit), the economic cost of implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification. This finding is based on the following factors:

- The presence of the species already results in significant baseline protection under the Act.
- Project modifications requested by the Service to avoid jeopardy to the species are also likely to avoid adverse modification of critical habitat. The proposed designation of critical habitat is unlikely to generate recommendations for additional or different project modifications.
- Critical habitat is unlikely to increase the number of consultations occurring in occupied habitat as a result of the existing awareness by Federal agencies of the need to consult due to the listing of the species.
- The proposed designation also receives baseline protection from the presence of the State-listed endangered plant, saltwort *(Salicornia rubra).*

In unoccupied habitat (Rock Creek, Oak Creek, and Haines Branch Units), the proposed designation will generate the need for section 7 consultation on projects or activities that may affect critical habitat. The administrative costs of these consultations, and costs of any project modifications resulting from these consultations, reflect incremental costs of the critical habitat rule. In particular, we may request project modifications, including erosion control and biological monitoring for highway projects to avoid adverse modification in unoccupied critical habitat, and grazing restrictions for consultations related to potential conservation partnerships.

Based on the historical consultation rate and forecasts of projects and activities identified by land managers, the number of future consultations is likely to be fewer than 12 in a single year, all of which are expected to be conducted informally. The additional administrative cost of addressing adverse modification during informal section 7 consultation is approximately $2,400 per consultation, and the full cost of a new informal consultation is approximately $7,100 per consultation. Incremental project modification costs may include $360,000 for highway projects in the Oak Creek Unit, and up to $110,000 if grazing exclosures are implemented through conservation partnerships in the Rock Creek Unit. Incremental costs are likely to be greatest in the Oak Creek Unit and are driven by project modifications for highway construction activities. Total forecast incremental costs of section 7 consultations, including administrative and project modification costs, are likely to be less than $540,000 in a given year. Thus, in summary, the incremental costs resulting from the critical habitat designation are unlikely to reach $100 million in a given year based on the number of anticipated consultations and per-consultation administrative and project modification costs.

We are aware of other types of costs associated with the proposed designation of critical habitat. For example, the designation of critical habitat may cause farmers and ranchers to perceive that private lands will be subject to land use restrictions, resulting in perceptional effects. Such costs, if they occur, are unlikely to reach $100 million in a given year based on the number of acres most likely to be affected (1,110 ac (449 ha)) and the value of those acres. Additionally, the designation of critical habitat is unlikely to trigger additional requirements under State or local regulations. This conclusion is based on the likelihood that activities in wetland areas will require Federal permits and, therefore, section 7 consultation.

The proposed designation of critical habitat has the potential to convey other benefits to the public. Additional efforts to conserve the beetle are anticipated in unoccupied habitat. These project modifications may result in direct benefits to the species (e.g., increased potential for recovery) as well as broader improvements to environmental quality in these areas. Due to existing data limitations, we are unable to assess the likely magnitude of such benefits.

As we stated earlier, we are soliciting data and comments from the public on the DEA, the draft EA, 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 June 4, 2013, proposed rule (78 FR 33282), 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 proposed designation of critical habitat for the Salt Creek tiger beetle, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (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.*), 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 the Salt Creek tiger beetle, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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 required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are 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 the 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 the Salt Creek tiger beetle 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 economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Salt Creek tiger beetle. 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 economic analysis assessment 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 the Salt Creek tiger beetle does not pose significant takings implications for lands within or affected by the designation.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we are required to complete NEPA analysis when designating critical habitat under the Act within the boundaries of the Tenth Circuit. We prepared an environmental assessment for our 2010 final rule designating critical habitat for the Salt Creek tiger beetle, and made a finding of no significant impacts. Although the State of Nebraska is not part of the Tenth Circuit, and, therefore, NEPA analysis is not required, we have undertaken a NEPA analysis in this case since we conducted one previously for our 2010 final rule. Accordingly, we have prepared a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Salt Creek tiger beetle.

The draft EA presents the purpose of and need for critical habitat designation, the proposed action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

The draft EA will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a finding of no significant impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment. We are seeking data and comments from the public on the draft EA, which is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0068 and at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/.*

Authors

The primary authors of this notice are the staff members of the Nebraska Ecological Services Field Office, Region 6, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 5, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–05445 Filed 3–12–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 79, No. 49
Thursday, March 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

Office of the Secretary

Tongass Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of call for nominations period.

SUMMARY: The U.S. Department of Agriculture (USDA) is extending the call for nominations an additional fifteen days, from February 27, 2014, to March 14, 2014, for the solicitation of membership to the newly established Tongass Advisory Committee (Committee). The USDA published a Notice of Intent in the **Federal Register** on January 13, 2014, (79 FR 2147). The USDA requested nominations and applications for individuals to be considered as Committee members. The public is invited to submit nominations for membership. Further information about the Committee is posted on the Tongass Advisory Committee Web site: *http://www.fs.usda.gov/goto/R10/Tongass/TAC*.

DATES: The extension will be effective February 27, 2014. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed form AD–755 (Advisory Committee Membership Background Information). The form AD–755 may be obtained from Forest Service contact person or from the following Web site: *http://www.ocio.usda.gov/forms/doc/AD-755_Master_2012_508%20Ver.pdf*. The package must be sent to the address below.

ADDRESSES: Send nominations and applications to Nicole McMurren, Tongass Advisory Committee Coordinator, U.S. Department of Agriculture, Forest Service, Tongass National Forest, P.O. Box 309, Petersburg, AK 99833–0309.

FOR FURTHER INFORMATION CONTACT: Nicole McMurren, U.S. Forest Service, Petersburg, AK 99833; telephone: 907–772–5875, email: *nmcmurren@fs.fed.us*. Individuals who use telecommunications devices or the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Dated: March 5, 2014.

Gregory Parham,

Assistant Secretary for Administration, United States Department of Agriculture.

[FR Doc. 2014–05447 Filed 3–12–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet in Weaverville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meeting is to review and vote on proposals for project funding.

DATES: The meeting will be held on April 7, 2014, from 3:00 p.m. to 5:00 p.m. and 6:30 p.m. to 8:30 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, Conference Room, 201 Memorial Drive, Weaverville, California. Memorial Drive is at the west end of Weaverville, just off Highway 299 on the road leading to the High School.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Shasta-Trinity National Forest Headquarters office in Redding, California. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Donna F. Harmon, Designated Federal Official, by phone at 530–226–2335 or via email at *dharmon@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees*. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing no less than one week before each meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Donna Harmon, Designated Federal Official, 3644 Avtech Parkway, Redding, California 96002; or by email to *dharmon@fs.fed.us,* or via facsimile to 530–226–2486.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: March 6, 2014.

David R. Myers,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 2014–05485 Filed 3–12–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting; correction.

SUMMARY: The Forest Service in the **Federal Register** of March 7, 2014 concerning a notice of meeting for the Del Norte Resource Advisory Committee. The document contained an incorrect date and location.

FOR FURTHER INFORMATION CONTACT: LynnWright, RAC Coordinator, 707–441–3562.

Correction

In the **Federal Register** of March 7, 2014, in FR Doc. 2014–04979, on page 13037, correct the first sentence to read: ''The Del Norte Resource Advisory Committee (RAC) will meet in Crescent City, California.'' Correct the first sentence in ''Date'' section to read:

''The meetings will all start at 6:00 p.m. on the following dates:

- April 8, 2014
- April 24, 2014''

Dated: March 7, 2014.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2014–05487 Filed 3–12–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: USDA Forest Service.

ACTION: Notice of intent to call for nominations.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule (Committee) was re-established on February 3, 2014, in the public interest, to continue providing advice and recommendations on the implementation of the National Forest System Land Management Planning Rule (planning rule). Therefore, the Secretary of Agriculture is seeking nominations for individuals to be considered as Committee members. The public is invited to submit nominations for membership. Further information about the Committee is posted on the Planning Rule Advisory Committee Web site: *http://www.fs.usda.gov/main/planningrule/committee.*

DATES: Written nominations must be received by April 28, 2014. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed form AD–755 (Advisory Committee Membership Background Information). The form AD–755 may be obtained from the following Web site: *http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5203568.pdf* or via email from Chalonda Jasper at *cjasper@fs.fed.us.* The package must be sent to the address below.

ADDRESSES: Send nominations and applications to Andre Teague, USDA Forest Service, National Forest System, Mail Stop 1106, 201 14th Street SW., Washington, DC 20025 by express mail or overnight courier service. If sent via the U.S. Postal Service, they must be sent to the following address: U.S. Department of Agriculture, Forest Service, National Forest System, Mail Stop 1106, 1400 Independence Avenue SW., Washington, DC 20250–1106.

FOR FURTHER INFORMATION CONTACT: Tony Tooke, USDA Forest Service, National Forest System, by telephone: 202–205–0824 or by email: *ttooke@fs.fed.us.* Chris French, USDA Forest Service, National Forest System, Ecosystem Management Coordination, by telephone: 202–205–1022 or by email: *cfrench@fs.fed.us.* Chalonda Jasper, USDA Forest Service, National Forest System, Planning Specialist, by telephone: 202–260–9400 or by email: *cjasper@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the Committee is to provide advice and recommendations on implementation of the planning rule. The current Committee officially transmitted their recommendations to improve the draft planning rule directives to the USDA Forest Service on November 21, 2013. This marked an important accomplishment and point of transition for the Committee. Having finalized consensus recommendations on the draft directives, the Committee now turns its full attention to improving the efficiency and efficacy of implementing the planning rule. The current Committee's membership will expire in June 2014.

The Committee will be asked to perform the following duties or other requests made by the Secretary of Agriculture or the Chief of the Forest Service:

1. Offer ongoing advice related to the implementation directives of the planning rule;

- Collaborating around recommendations for and implementation of the rule, retaining national policy focus.

2. Offer assistance with outreach efforts;

- Engaging with US Forest Service, including with early adopter forests, and reaching out beyond the US Forest Service and across other Government agencies.

3. Offer overall guidance on planning practices important to implementation of the planning rule;

- Developing guidance on techniques, strategies and potential partners to facilitate outreach and greater understanding to broader public, including youth, local communities, urban constituencies etc.

Advisory Committee Organization

This Committee will be comprised of not more than 21 members who provide balanced and broad representation within each of the following three categories of interests:

1. Up to 7 members who represent one or more of the following:

a. Represent the affected public at-large.

b. Hold State-elected office (or designee).

c. Hold county or local elected office.

d. Represent American Indian Tribes.

e. Represent Youth.

2. Up to 7 members who represent one or more of the following:

a. National, regional, or local environmental organizations.

b. Conservation organizations or watershed associations.

c. Dispersed recreation interests.

d. Archaeological or historical interests.

e. Scientific Community.

3. Up to 7 members who represent one or more of the following:

a. Timber industry.

b. Grazing or other land use permit holders or other private forest landowners.

c. Energy and mineral development.

d. Commercial or recreational hunting and fishing interests.

e. Developed outdoor recreation, off-highway vehicle users, or commercial recreation interests.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee. Members of the Committee serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Committee, subject to approval by the Designated Federal Official (DFO).

The Committee will meet three to six times annually or as often as necessary and at such times as designated by the DFO.

The appointment of members to the Committee will be made by the Secretary of Agriculture. Any individual or organization may nominate one or more qualified persons to serve on the National Advisory Committee for Implementation of the Planning Rule. Individuals may also nominate themselves. To be considered for membership, nominees must submit a:

1. Resume describing qualifications for membership to the Committee;

2. Cover letter with a rationale for serving on the committee and what the applicant can contribute; and

3. Complete form AD–755, Advisory Committee Membership Background Information.

Letters of recommendation are welcome. The form AD–755 may be obtained from the following Web site: *http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5203568.pdf* or via email from Chalonda Jasper at *cjasper@fs.fed.us.* All nominations will be vetted by U.S. Department of Agriculture (USDA). The Secretary of Agriculture will appoint committee members to the National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule from the list of qualified applicants.

Equal opportunity practices in accordance with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee take into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: *March 7, 2014.*

Malcom A. Shorter,

Deputy Assistant Secretary for Administration, U. S. Department of Agriculture.

[FR Doc. 2014–05467 Filed 3–12–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2012]

Foreign-Trade Zone (FTZ) 45—Portland, OR, Epson Portland Inc. (Subzone 45F), Amendment to Application for Expanded Manufacturing Authority (Inkjet Printer Cartridges)

On February 26, 2014, the Port of Portland, grantee of FTZ 45, amended its application to the FTZ Board on behalf of Epson Portland Inc. (EPI), requesting expanded manufacturing authority. The original application was filed by the Board in January 2012 (77 FR 4006–2007, 1/26/2012). The amendment reduces the scope of both products and inputs for which expanded authority is requested.

The amended application requests authority for EPI to elect non-privileged foreign (NPF) status (19 CFR 146.42) on the foreign-sourced materials listed below for EPI to use internally in producing ink subsequently incorporated into EPI's production of inkjet printer cartridges. The amended application does not request authority for EPI to elect NPF status on these materials when EPI makes entry on bulk ink (rather than on finished inkjet printer cartridges).

The amended application lists the following materials sourced from abroad for which it is requesting to admit in NPF status: potassium hydroxide; acrylic alcohols (surfactants); 2-ethyl, 2-propane-1,3diol; glycerin; 2,2 oxydiethanol (diethylene glycol, digol); ether-alcohols (penetrants); adipic acid; triethanolamine & its salts (other emulsifiers); amino acids (stabilizers); N-methyl-2-pyrrolidone; 2-pyrriolidone; benzotriazole; direct dyes & preparations based on these direct dyes (yellow, black, cyan, brown, orange, violet, red, green, magenta, other); preparations based on carbon black; paints and varnish based on acrylic or vinyl polymers (solvents); surface active agents; organic solvents/thinners (containing 5%–25% by weight of one or more aromatic or modified aromatic substances); chemical mixtures (biocides, surfactants); and, plastics, polymers of styrene (duty rates range from free to 6.5%). The amended application also requests authority for EPI to elect privileged foreign (PF) status (19 CFR 146.41) on dispersions of pigments in plastics used in the proposed activity.

Public comment is invited on the amended application through April 14, 2014. Rebuttal comments may be submitted during the subsequent 15-day period, until April 28, 2014. Submissions shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 21013, 1401 Constitution Ave. NW., Washington, DC 20230.

A copy of the amended application will be available for public inspection at the address above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: March 7, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–05533 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1933]

Reorganization and Expansion of Foreign-Trade Zone 20 Under Alternative Site Framework Suffolk, Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Virginia Port Authority, grantee of Foreign-Trade Zone 20, submitted an application to the Board (FTZ Docket B–34–2013, docketed 04–18–2013, amended 10–02–2013) for authority to reorganize and expand under the ASF with a service area consisting of the Counties of Accomack (partial), Gloucester, Isle of Wight, James City, Mathews, Northampton, Southampton, Sussex, Surry and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, within and adjacent to the Norfolk-Newport News Customs and Border Protection port of entry, FTZ 20's existing Sites 9, 19, 21, 23, 24 and new Site 34 would be categorized as magnet sites, and Sites 2, 3, 22, 25, 32, 33 and new Site 35 would be categorized as usage-driven sites;

Whereas, notice inviting public comment was given in the **Federal**

Register (78 FR 24157, April 24, 2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application, as amended, to reorganize and expand FTZ 20 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 9, 19, 21, 23, 24 and 34 if not activated by February 28, 2019, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2, 3, 22, 25, 32, 33 and 35 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by February 28, 2017.

Signed at Washington, DC, this 28th day of February 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board

[FR Doc. 2014–05534 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Aliaksandr Stashynski, Seneca County Jail, 3040 South State Route 100, Tiffin, OH 44883; Order Denying Export Privileges

On February 28, 2013, in the U.S. District Court, Eastern District of Pennsylvania, Aliaksandr Stashynski (''Stashynski''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Stashynski conspired and agreed, together with others known and unknown, to willfully export from the United States to Belarus export-controlled items, including but not limited to L–3 x 200xp Handheld Thermal Imaging Cameras, without first obtaining from the United States Department of Commerce a license or written authorization. Stashynski was sentenced to six months in prison followed by three years of supervised release, a $3,000 criminal fine and an assessment of $100.00. Stashynski was released from prison on November 6, 2013.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Stashynski's conviction for violating the IEEPA, and have provided notice and an opportunity for Stashynski to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Stashynski.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Stashynski's export privileges under the Regulations for a period of 10 years from the date of Stashynski's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Stashynski had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*

I. Until February 28, 2023, Aliaksandr Stashynski, with a last known address at: Seneca County Jail, 3040 South State Route 100, Tiffin, OH 44883, and when acting for or on behalf of Stashynski, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Stashynski by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until February 28, 2023.

V. In accordance with Part 756 of the Regulations, Stashynski may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Stashynski. This Order shall be published in the **Federal Register**.

Issued this 4th day of March 2014.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 2014–05486 Filed 3–12–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–873, A–791–815]

Ferrovanadium From the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (''the Department'') finds that revocation of the antidumping duty (''AD'') orders on ferrovanadium from the People's Republic of China (''PRC'') and the Republic of South Africa (''South Africa'') would likely lead to continuation or recurrence of dumping. The magnitudes of the dumping margins likely to prevail are indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: *Effective Date:* March 13, 2014.

FOR FURTHER INFORMATION CONTACT: Lori Apodaca or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4551 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2003, the Department published the AD orders on ferrovanadium from the PRC and South Africa.[1] On November 1, 2013, the Department published the notice of initiation of the second sunset reviews of these AD orders, pursuant to section 751(c) of the Act.[2] On November 15, 2013, pursuant to 19 CFR 351.218(d)(1), the Department received timely and complete notices of intent to participate in the sunset reviews of both orders from Vanadium Producers and Reclaimers Association (''VPRA'') and VPRA members Gulf Chemical & Metallurgical Corporation (''Gulf''), Gulf's wholly-owned subsidiary Bear Metallurgical Company (''Bear''), AMG Vanadium, Inc. (''AMGV''), and Evraz Stratcor, Inc. (''Stratcor'') (collectively ''Domestic Producers''). On December 2, 2013, pursuant to 19 CFR 351.218(d)(3), Domestic Producers filed a timely and adequate substantive response for both orders. The Department did not receive substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of these AD orders.

Scope of the Orders

The scope of these orders covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of these orders remains dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.[3] The issues discussed in the I&D Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margins likely to prevail if the orders are revoked. The I&D Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed I&D Memorandum and the electronic version of the I&D Memorandum are identical in content.

Final Results of Sunset Reviews

The Department determines that revocation of the AD orders on ferrovanadium from the PRC and South Africa would be likely to lead to continuation or recurrence of dumping, with the following dumping margins likely to prevail:

[1] *See Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa,* 68 FR 4169 (January 28, 2003); *see also Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovanadium From the People's Republic of China,* 68 FR 4168 (January 28, 2003).

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 65614 (November 1, 2013).

[3] *See* ''Issues and Decision Memorandum for the Expedited Second Sunset Reviews of the Antidumping Duty Orders on Ferrovanadium from the People's Republic of China and the Republic of South Africa,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (''I&D Memorandum'').

Exporter/producer	Weighted-average percentage margin
PRC	
Pangang Group International Economic & Trading Corporation	12.97
PRC-Wide Entity	66.71
South Africa	
Highveld Steel and Vanadium Corporation, Ltd.	116.00
Xstrata South Africa (Proprietary) Limited	116.00
All Others	116.00

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: February 28, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–05528 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota-Twin Cities, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 13–034. Applicant: University of Minnesota-Twin Cities, Minneapolis, MN 55455. Instrument: Diode-Pumped Solid-State Femtosecond Laser. Manufacturer: Light Conversion, Luthuania. Intended Use: See notice at 78 FR 64916, October 30, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to study non-equilibrium materials processes ranging spatially from the atomic-scale up to micrometers and temporally from femtoseconds to seconds, including thermal transport, energy conversion (e.g., light to heat), crystallization, melting, phase transformations, fracture, and other dynamic events. The unique characteristics of the instrument required for the research objectives include a variable repetition rate from single-shot to 1 MHz controlled with TTL input for external triggering or via computer interface, 0.2 mJ/pulse (<30 kHz), 6 Watts at 1 MHz, collinear output from a harmonics module of fundamental (1030 nm), second harmonic (515 nm), and third harmonic (343 nm) with additional optics for operation at low and high repetition rates.

Docket Number: 13–036. Applicant: UChicago Argonne, Lemont, IL 60439. Instrument: High pressure crystal growth furnace with Siemens programmable logic controller. Manufacturer: SCIDRE-Scientific Instruments, Germany. Intended Use: See notice at 78 FR 64916, October 30, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to create transition metal oxides, including oxides of iron, manganese, copper, cobalt, vanadium, iridium, ruthenium, rhenium, titanium, nickel, and zinc. It will also be used to grow crystals of intermetallic phases, which are non-oxides of these same transition metals, alloyed with lanthanide metals and/or main group metals (e.g., Al, Si, Bi). These materials will be created to understand a variety of physical phenomena including superconductivity, metal-insulator transitions, and magnetism. With the crystals grown on the instrument, a variety of tests will be performed including magnetic measurements, structural determination by x-ray or neutron scattering, and electrical transport. The unique characteristics of this instrument required for the research objectives include operation at pressures of oxygen or inert gases up to 150 atm, measurement of image zone using pyrometric probes, and cleansing of inert gas stream to better than 10^{-12} ppm oxygen with monitoring during process.

Docket Number: 13–037. Applicant: Georgia Health Sciences University, Augusta, GA 30912. Instrument: Imaging System/Digital Microscope and Accessories. Manufacturer: Till Photonics, Germany. Intended Use: See notice at 78 FR 64916l, October 30, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used for fluorescence imaging of cellular organelles and calcium flux, photo-activation and photo-bleaching fluorescent proteins to study cellular organelles (mitochondria) and intracellular ion flux. The unique characteristics of the instrument include

fast wavelength change, a dichromotome system, and two different light sources that are incorporated and readily switchable, incorporated into a single unit of a wide field fluorescence microscope.

Dated: March 7, 2014.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2014–05532 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

South Dakota State University, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 13–030. Applicant: South Dakota State University, Brookings, SD 57007. Instrument: iMIC Andromeda. Manufacturer: Till Photonics, Germany. Intended Use: See notice at 78 FR 70536, November 26, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to fluorescently label the macrophage colony stimulating factor (MCSF) and other signaling molecules in live primary bone marrow macrophages (BMMs). This instrument is the only confocal using a single micro lens disk, making it the only spinning disk system available that meets the needs for fast, multi fluorophore and Fluorescence Resonance Energy Transfer experiments over a range of objective lens magnifications. Furthermore, it is the only instrument that can rapidly interchange custom dichtroich mirrors, which is essential for experiments relying on new fluorescent proteins.

Docket Number: 13–043. Applicant: University of Colorado at Boulder, Boulder, CO 80309. Instrument: Cyclic Triaxial Testing Device. Manufacturer: Willie Geotechnik, Germany. Intended Use: See notice at 78 FR 70536–37, November 23, 2013. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to study the response of soils under monotonic static loading compared to 1–D and 2–D cyclic loading, evaluate the influence of load amplitude and frequency content on the response of soils in terms of shear modulus and damping versus strain, and evaluate the influence of soil-content on its dynamic properties. It is critical to have the capability to simulate realistic static and dynamic stress conditions to the soil samples, which is facilitated by the instrument. The key specification in the research that was satisfied by the instrument is the ability to apply cyclic loading at high frequencies (up to about 30Hz) to simulate earthquake loading. The instrument is also capable of testing soil samples larger than 70mm, the pressure system/pressure controller has a resolution of 0.1 KPa which provides greater accuracy, and the load frame capacity for both static and dynamic loading is 25 KN.

Dated: March 7, 2014.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2014–05535 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC986

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys on the South Farallon Islands, California

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

ACTION: Notice; withdrawal of an incidental take authorization application.

SUMMARY: Notice is hereby given that the National Ocean Service's Office of National Marine Sanctuaries Gulf of the Farallones National Marine Sanctuary (GFNMS) has withdrawn its application for an Incidental Harassment Authorization (IHA). The following action is in relation to a proposed IHA to GFNMS for the take of small numbers of marine mammals, by harassment, incidental to rocky intertidal monitoring work and searching for black abalone, components of the Sanctuary Ecosystem Assessment Surveys.

ADDRESSES: A copy of the application, which contains several attachments, including COP's marine mammal mitigation and monitoring plan and Plan of Cooperation, can be viewed on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On September 12, 2013, NMFS received an application from GFNMS for the taking of marine mammals incidental to rocky intertidal monitoring work and searching for black abalone. NMFS determined that the application was adequate and complete on November 14, 2013. The requested IHA was for an authorization to take, by Level B harassment, small numbers of five species of marine mammals incidental to GFNMS' rocky intertidal monitoring work and the search for black abalone in areas previously unexplored for black abalone from January 25 through February 1, 2014. NMFS published a Notice of Proposed IHA, initiating a 30-day public comment period, on November 27, 2013 (78 FR 70921). On January 14, 2014, NMFS accepted notice from GFNMS withdrawing their IHA application for the proposed action. The trip was cancelled due to a lack of funding. Therefore, NMFS did not issue an IHA for the proposed specified activity.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–05471 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC779

Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Dumont d'Urville Sea off the Coast of East Antarctica, January to March 2014

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

ACTION: Notice; issuance of an Incidental Take Authorization (ITA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the National Science Foundation (NSF), Division of Polar Programs, and Antarctic Support Contract (ASC) on behalf of five research institutions: Colgate University, Columbia University, Texas A&M Research Foundation, University of South Florida, and University of Texas at Austin, to take marine mammals, by Level B harassment only, incidental to conducting a low-energy marine geophysical (seismic) survey in the Dumont d'Urville Sea off the coast of East Antarctica, January to March 2014.

DATES: Effective January 31 through April 27, 2014.

ADDRESSES: A copy of the final IHA and application are available by writing to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contacts listed here, or by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

NSF and ASC have provided an ''Initial Environmental Evaluation/Environmental Assessment to Conduct Marine-Based Studies of the Totten Glacier System and Marine Record of Cryosphere—Ocean Dynamics'' (IEE/EA), prepared by AECOM, on behalf of NSF and ASC, which is also available at the same Internet address. NMFS also issued a Biological Opinion under section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and IHA on marine species listed as threatened and endangered. The NMFS Biological Opinion is available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On July 3, 2013, NMFS received an application from the NSF and ASC requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey in International Waters (i.e., high seas) and in the Southern Ocean off the coast of East Antarctica during January to March 2014. Per NMFS request, NMFS received an addendum to the application from the NSF and ASC on December 18, 2013, which reflected updates to incidental take requests for marine mammals related to icebreaking activities.

The research will be conducted by five research institutions: Colgate University, Columbia University, Texas A&M Research Foundation, University of South Florida, and University of Texas at Austin. The NSF and ASC plan to use one source vessel, the RVIB *Nathaniel B. Palmer* (*Palmer*), and a seismic airgun array to collect seismic data in the Southern Ocean. The vessel will be operated by Edison Chouest Offshore, Inc., a subcontractor to ASC, which operates the United States Antarctic Program under contract to the NSF. In support of the United States Antarctic Program, the NSF and ASC plan to use conventional low-energy, seismic methodology to perform marine-based studies in the Dumont d'Urville Sea to include evaluation of geophysical and physical oceanographic features in two areas along the coast of East Antarctica (see Figures 1, 2, and 3 of the IHA application). The primary area proposed for the study is the Totten Glacier system (preferred study area) including the Moscow University Ice Shelf along the Sabrina Coast, and a secondary area, the Mertz Glacier and Cook Ice Shelf, along the Oates Coast. In addition to the planned operations of the seismic airgun array and hydrophone streamer, NSF and ASC intend to operate a single-beam echosounder, multi-beam echosounder, acoustic Doppler current profiler (ADCP), and sub-bottom profiler continuously throughout the survey. On January 3, 2014, NMFS published a notice in the **Federal Register** (79 FR 464) making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period. On January 7, 2014, NMFS published a notice in the **Federal Register** (79 FR 816) correcting the close of the public comment period from February 3, 2014 to January 30, 2014.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array and from icebreaking activities have the potential to cause marine mammal behavioral disturbance in the survey

area. This is the principal means of marine mammal taking associated with these activities, and NSF and ASC have requested an authorization to take 14 species of marine mammals by Level B harassment. Take is not expected to result from the use of the single-beam echosounder, multi-beam echosounder, ADCP, acoustic locator, and sub-bottom profiler, as the brief exposure of marine mammals to one pulse, or small numbers of signals, in this particular case is not likely to result in the harassment of marine mammals. Also, NMFS does not expect take to result from collision with the source vessel because it is a single vessel moving at a relatively slow, constant cruise speed of 5 knots [kts]; 9.3 kilometers per hour [km/hr]; 5.8 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 45 operational days). It is likely that any marine mammal will be able to avoid the vessel.

Description of the Specified Activity

NSF and ASC plan to conduct a low-energy seismic survey in the Dumont d'Urville Sea in the Southern Ocean off the coast of East Antarctica from January to March 2014. In addition to the low-energy seismic survey, scientific activities will include conducting a bathymetric profile survey of the seafloor using transducer based instruments such as a multi-beam echosounder and sub-bottom profiler; conducting magnetometry and imaging surveys using an underwater camera assembly; collecting sediment cores and dredge sampling; and collecting water samples and conductivity (salinity), temperature, depth (CTD) and current data through the deployment and recovery of short-term (in place for approximately one month) and long-term (in place for approximately one year) instrumentation moorings, CTD equipment casts, and the use of transducer-based ADCP instruments. Sea ice conditions will dictate areas where the ship and airguns can operate. Due to dynamic ice conditions, which cannot be predicted on a local scale, it is not possible to develop tracklines a priori. The seismic survey will be conducted in one or both of the two study areas depending on the sea ice conditions; however, the preferred study area is the Totten Glacier region (see Figure 2 of the IHA application). Water depths in the survey area range from 100 to 1,000 meters (m) (328.1 to 3,280.1 feet [ft]), and possibly exceeding 1,000 m in some areas. The seismic surveys are scheduled to occur for a total of less than or equal to 300 hours at one or both of the two study areas for approximately 45 operational days in January to March 2014. The operational hours and survey length will include equipment testing, ramp-up, line changes, and repeat coverage. The long transit time between port and the study site constrains how long the ship can be in the study area and effectively limits the maximum amount of time the airguns can operate. Some minor deviation from these dates will be possible, depending on logistics and weather.

The planned survey of Totten Glacier and Moscow University Ice Shelf along the Sabrina Coast continental shelf is designed to address several critical questions. The Totten Glacier system, which drains one-eighth of the East Antarctic Ice Sheet and contains more ice volume than the entire West Antarctic Ice Sheet, remains the single largest and least understood glacial system which possesses a potentially unsteady dynamic. If it were to melt, the sea-level will rise by more than 5 m (16.4 ft) worldwide. The planned marine studies will help to understand both the dynamics and the controls of the Totten Glacier system, and to resolve ambiguity in large ice mass dynamic behavior. This research will be accomplished via the collection of glaciological, geological, and physical oceanographic data. In order to place the modern system, as well as more recent changes to the system, into a longer-term perspective, researchers will collect and interpret marine geologic, geochemical, and geophysical records of the longer term behavior and response of this system.

The planned research will complement fieldwork studying other Antarctic ice shelves oceanographic studies near the Antarctic Peninsula, and ongoing development of ice sheet and other ocean models. It will facilitate learning at sea and ashore by students, help to fill important spatial and temporal gaps in a sparsely sampled region of coastal Antarctica, and communicate its findings via publications and outreach. Obtaining records of currents and oceanographic properties in this region are consistent with the objectives of the Southern Ocean Observing System for climate change. The work will enhance general understanding of air-sea-ice interactions, ocean circulation, ice shelf sensitivity to climate change, and the present and future roles of East Antarctic Ice Sheet on sea level. The Principal Investigators are Dr. Amy Leventer of Colgate University, Dr. Donald Blankenship and Dr. Sean Gulick of the University of Texas at Austin, Dr. Eugene Domack of the University of South Florida, Mr. Bruce Huber of Columbia University, and Dr. Alejandro Orsi of Texas A&M Research Foundation.

The procedures to be used for the surveys will be similar to those used during previous low-energy seismic surveys by NSF and will use conventional seismic methodology. The planned survey will involve one source vessel, the RVIB *Nathaniel B. Palmer* (*Palmer*). NSF and ASC will deploy two (each with a discharge volume of 45 cubic inch [in^3] with a total volume of 90 in^3 or each with a discharge volume of 105 in^3 with a total volume of 210 in^3) Sercel Generator Injector (GI) airgun array as an energy source at a tow depth of up to 3 m (9.8 ft) below the surface (more information on the airguns can be found in Appendix B of the IHA application). The receiving system will consist of one 100 m (328.1 ft) long, 24-channel, solid-state hydrophone streamer towed behind the vessel. As the GI airguns are towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the onboard processing system. All planned seismic data acquisition activities will be conducted by technicians provided by NSF and ASC with onboard assistance by the scientists who have planned the study. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

The planned seismic survey (e.g., equipment testing, start-up, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 2,800 kilometer (km) (1,511.9 nautical miles [nmi]) of transect lines (including turns) in the survey area in the Dumont d'Urville Sea of the Southern Ocean (see Figures 1, 2, and 3 of the IHA application). In addition to the operation of the airgun array, a single-beam and multi-beam echosounder, ADCP, and a sub-bottom profiler will also likely be operated from the *Palmer* continuously throughout the cruise between the first and last survey sites. There will be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In NSF and ASC's estimated take calculations, 25% has been added for those additional operations.

TABLE 1—PLANNED LOW-ENERGY SEISMIC SURVEY ACTIVITIES IN THE DUMONT D'URVILLE SEA OFF THE COAST OF EAST ANTARCTICA

Survey length (km)	Cumulative duration (hr) [1]	Airgun array total volume	Time between airgun shots (Distance)	Streamer length (m)
2,800 (1,511.9 nmi)	≤300	2 × 45 in^3 (2 × 737 cm^3) or 2 × 105 in^3 (2 × 1,720 cm^3).	5 seconds ..... (12.5 m or 41 ft)	100 (328.1 ft).

[1] Airgun operations are planned for no more than 16 continuous hours at a time.

Seismic Airguns

The *Palmer* will deploy an airgun array, consisting of two 45 in^3 or two 105 in^3 GI airguns as the primary energy source and a 100 m streamer containing hydrophones. The airgun array will have a supply firing pressure of 2,000 pounds per square inch (psi) and 2,200 psi when at high pressure stand-by (i.e., shut-down). The regulator is adjusted to ensure that the maximum pressure to the GI airguns is 2,000 psi, but there are times when the GI airguns may be operated at pressures as low as 1,750 to 1,800 psi. Seismic pulses for the GI airguns will be emitted at intervals of approximately 5 seconds. At a ship speed of approximately 9.3 km/hr, the shot intervals correspond to spacing of approximately will be 12.5 m (41 ft) during the study. There will be approximately 720 shots per hour. During firing, a brief (approximately 0.03 second) pulse sound is emitted; the airguns will be silent during the intervening periods. The dominant frequency components range from two to 188 Hertz (Hz).

The GI airguns will be used in harmonic mode, that is, the volume of the injector chamber (I) of each GI airgun is equal to that of its generator chamber (G): 45 in^3 and 105 in^3 for each airgun array. Each airgun will be initially configured to a displacement volume of 45 in^3 for the generator and injector. The generator chamber of each GI airgun in the primary source, the one responsible for introducing the sound pulse into the ocean, is 45 in^3. The injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The airguns will fire the compressed air volume in unison in a harmonic mode. In harmonic mode, the injector volume is designed to destructively interfere with the reverberations of the generator (source component). Firing the airguns in harmonic mode maximizes resolution in the data and minimizes any excess noise in the water column or data caused by the reverberations (or bubble pulses). The two GI airguns will be spaced approximately 3 or 6 m (9.8 or 19.7 ft) apart, side-by-side, between 15 and 40 m (49.2 and 131.2 ft) behind the *Palmer,* at a depth of up to 3 m during the surveys. If needed to improve penetration of the strata, the two airguns may be reconfigured to a displacement volume of 105 in^3 each and will still be considered a low-energy acoustic source as defined in the NSF/USGS PEIS. Therefore, there are three possible two airgun array configurations: two 45/45 in^3 airguns separated by 3 m, two 45/45 in^3 airguns separated by 6 m, and two 105/105 in^3 airguns separated by 3 m. The two 45/45 in^3 airguns separated by 3 m layout is preferred, the two 45/45 in^3 separated by 6 m layout will be used in the event the middle of the three 45/45 in^3 airgun fails, and the two 105/105 in^3 airguns separated by 3 m will be used only if additional penetration is needed. To summarize, two strings of GI airguns will be available: (1) Three 45/45 in^3 airguns on a single string where one of these is used as a ''hot spare'' in the event of failure of one of the other two airguns, these three GI airguns are separated by 3 m; and (2) two 105/105 in^3 airguns on a second string without a ''hot spare.'' The total effective volume will be 90 or 210 in^3. The two strings will be spaced 14 m (45.9 ft) apart, on either side of the midline of the vessel, however, only one string at a time will be used.

The Nucleus modeling software used at Lamont-Doherty Earth Observatory of Columbia University (L–DEO) does not include GI airguns as part of its airgun library, however signatures and mitigation models have been obtained for two 45 in^3 G airguns at 2 m tow depth and two 105 in^3 G airguns at 3 m tow depth that are close approximations. For the two 45 in^3 airgun array, the source output (downward) is 230.6 dB re: 1 μPam for 0-to-peak and 235.9 dB re: 1 μPam for peak-to-peak. For the two 105 in^3 airgun array, the source output (downward) is 234.4 dB re: 1 μPam 0-to-peak and 239.8 dB re: 1 μPam for peak-to-peak. These numbers were determined using the aforementioned G-airgun approximation to the GI airgun and using signatures filtered with DFS V out-256 Hz 72 dB/octave. The dominant frequency range will be 20 to 160 Hz for a pair of GI airguns towed at 3 m depth and 35 to 230 Hz for a pair of GI airguns towed at 2 m depth.

During the low-energy seismic survey, the vessel will attempt to maintain a constant cruise speed of approximately 5 knots. The airguns will operate continuously for no more than 16 hours at a time and duration of continuous operation is dependent on ice concentration. The cumulative duration of the airgun operations will not exceed 300 hrs. The relatively short, 24-channel hydrophone streamer will provide operational flexibility to allow the seismic survey to proceed along the designated cruise track with minimal interruption due to variable sea ice conditions. The design of the seismic equipment is to achieve high-resolution images of the glacial marine sequence stratigraphy with the ability to correlate to the ultra-high frequency sub-bottom profiling data and provide cross-sectional views to pair with the seafloor bathymetry. The cruise path will be designated once in the study area and will take care to avoid heavy ice conditions such as icebergs or dense areas of pack ice that could potentially damage the airguns or streamer and minimize proximity to potential marine receptors.

Weather conditions that could affect the movement of sea ice and hinder the hydrophone streamer will be closely monitored, as well as conditions that could limit visibility. If situations are encountered which pose a risk to the equipment, impede data collection, or require the vessel to stop forward progress, the seismic survey equipment will be shut-down and retrieved until conditions improve. In general, the hydrophone streamer and sources could be retrieved in less than 30 minutes.

Bathymetric Survey

Along with the low-energy airgun operations, other additional geophysical measurements will be made using swath bathymetry, backscatter sonar imagery, high-resolution sub-bottom profiling (''CHIRP''), imaging, and magnetometer instruments. In addition, several other transducer-based instruments onboard

the vessel will be operated continuously during the cruise for operational and navigational purposes. Operating characteristics for the instruments to be used are described below.

Single-Beam Echosounder (Knudsen 3260)—The hull-mounted CHIRP sonar will be operated continuously during all phases of the cruise. This instrument is operated at 12 kHz for bottom-tracking purposes or at 3.5 kHz in the sub-bottom profiling mode. The sonar emits energy in a 30° beam from the bottom of the ship.

Single-Beam Echosounder (Bathy 2000)—The hull-mounted sonar characteristics of the Bathy 2000 are similar to the Knudsen 3260. Only one hull-mounted echosounder can be operated a time, and this source will be operated instead of the Knudsen 3260 only if needed (i.e., only one will be in continuous operation during the cruise).

Multi-Beam Sonar (Simrad EM120)—The hull-mounted multi-beam sonar will be operated continuously during the cruise. This instrument operates at a frequency of 12 kHz, has an estimated maximum source energy level of 242 dB re 1µPa (rms), and emits a very narrow (<2°) beam fore to aft and 150° in cross-track. The multi-beam system emits a series of nine consecutive 15 ms pulses.

Acoustic Doppler Current Profiler (ADCP Teledyne RDI VM–150)—The hull-mounted ADCP will be operated continuously throughout the cruise. The ADCP operates at a frequency of 150 kHz with an estimated acoustic output level at the source of 223.6 dB re 1µPa (rms). Sound energy from the ADCP is emitted as a 30° conically-shaped beam. This ADCP is also considered the sub-bottom profiler.

Acoustic Doppler Current Profiler (ADCP Ocean Surveyor OS–38)—The characteristics of this backup hull-mounted ADCP unit are similar to the Teledyne VM–150 and will be continuously operated.

Acoustic Locator (Pinger)—An acoustic locator (i.e., pinger) will be deployed when using the Smith-McIntyre grab sampler and multi-corer (Mega-corer) to enable these devices to be located in the event they become detached from their lines. A pinger typically operates at a frequency of 12 kHz, generates a 5 ms pulse per second, and has an acoustical output of 162 dB re 1µPa (rms). A maximum total of 30 samples will be obtained using these devices and require approximately one hour per sample; therefore, the pinger will operate for a total of 30 hours.

Passive Instruments—During the seismic survey in the Dumont d'Urville Sea, a precession magnetometer and Air-Sea gravity meter will be deployed. In addition, numerous (approximately 24) expendable bathythermograph (XBTs) probes will also be released (and none will be recovered) over the course of the cruise to obtain temperature data necessary to calculate sound velocity profiles used by the multi-beam sonar.

Core and Dredge Sampling

The primary sampling goals involve the acquisition of marine sediment cores of various lengths up to 25 m (82 ft). It is anticipated that up to 65 sediment cores and grab samples and 12 rock dredge samples will be collected as summarized in Table 3 (Table 3 of the IHA application). Each core or grab sample will require approximately one hour per sample. All cores and dredges will be deployed using a steel cable/winch system.

Approximately 75 m^2 (807.3 ft^2) of seafloor will be disturbed by each of four deployments of the dredge at three different sites (resulting in a total of 900 m^2 [9,687.5 ft^2] of affected seafloor for the project). The selection of the bottom sampling locations and sampling method will be based on observations of the seafloor, subsurface reflectivity, sediment type, and accessibility due to ice and weather conditions. Bottom sampling in the Mertz Glacier area will be limited to strategically selected locations including possible re-sampling at a previous core site.

TABLE 2—CORING AND DREDGING ACTIVITIES IN THE DUMONT D'URVILLE SEA

Sampling device	Number of deployments
Smith-MycIntyre grab sampler	10 to 15.
Multi-corer (Mega-corer)	10 to 15.
Kasten corer (regular or jumbo).	20 to 25.
Jumbo piston corer	8 to 10.
Box cage dredge	10 to 12.

Limited sampling of rock material will be conducted using a dredge that will be towed along the seafloor for short distances (approximately 50 m [164 ft]) to collect samples of bedrock and ice rafted debris. The available dredges, which have openings of 0.5 to 1.5 m (1.6 to 4.9 ft), will be deployed on rocky substrates. The locations of the planned dredge sites are limited to the inner shelf (southern) perimeter of three areas: The Mertz Trough and two regions along the Sabrina Coast. Final selection of dredge sites will include review to ensure that the seamounts or corals in the area are avoided (AOA, 2011).

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) has adopted conservation measures (i.e., 22–06, 22–07, and 22–09) to protect vulnerable marine ecosystems (VME), which include seamounts, hydrothermal vents, cold water corals, and sponge fields. The conservation measure 22–07 includes mitigation and reporting requirements if VME are encountered. The science team will follow these requirements (see Attachment C of the IHA application) if VME's are encountered while sampling the sea bottom.

In addition, a camera and towed video system will be deployed at up to 25 sites. This device will lightly touch the seafloor to establish a baseline and rise to an optimum elevation to obtain the desired images.

Water Sampling and Current Measurements

High-resolution conductivity, depth, and temperature (CTD) measurements will be collected to characterize the summer regional water mass stratification and circulation, and the meridional exchange of waters between the oceanic and shelf regimes. These physical measurements will involve approximately SeaBird CTD system casts including the use of a lowered ADCP (LADCP).

The LADCP will consist of two Teledyne RDI Workhorse Monitor ADCPs mounted on the CTD/rosette frame and one oriented upward and the other downward. The LADCP and frame will be raised and lowered by cable and winch. The LADCPs will operate at a frequency of 307.2 kHz, with an estimated output acoustic pressure along each 4 beams of 216.3 dB re 1µPa at 1 m. The beams are angled at 20 degrees from the centerline of the ADCP head, with a beam angle of 4 degrees for the individual beams. Typical pulse duration is 5.7 ms, with a typical repetition rate of 1.75 s. The upward and downward-looking ADCPs are operated in master-salve mode so that only one head pings at a time. The LADCP will be operated approximately one hour at every CTD/rosette station (maximum of 100 stations) for a total of 100 hours of operation.

These instruments will be used to profile the full water column for temperature, salinity (conductivity), dissolved oxygen and currents at a series of transects in the study area. Discrete water samples will be collected for salinity and dissolved oxygen to monitor CTD/rosette performance, and for oxygen isotopes to assess meltwater content. Water samples will also be collected for development and interpretation of marine sediment proxies using Niskin bottles.

Observations of the thermal structure along other portions of the cruise track will be made using an underway CTD system and XBTs while the seafloor is swath-mapped. The number and spacing of stations will be adjusted according to ocean features discovered through multi-beam swath mapping and the sea ice conditions. If portions of the study area are inaccessible to the NBP, a contingency sampling focused on the inflows of MDCW will be pursued in adjacent shelf troughs.

It is noted that underway ADCP on the *Palmer* can, under ideal conditions, obtain profiles of ocean currents to depths greater than 800 m (2,624.7 ft). On continental shelves where depths may be less than the range of the ADCP, the underway profiles cannot resolve the deepest 15% of the water column due to side lobe reflections from the bottom which contaminate the water column Doppler returns. For a depth of 800 m, expected in the MCDW, currents in the lower 120 m (393.7 ft) could not be measured by the ship ADCP; therefore, the lowered ADCP can provide accurate current profiles to within a few meters of the bottom and provide complete coverage of the velocity field at each CTD station.

Instrumentation Moorings

Four instrumented moorings will be deployed during the cruise to measure current, temperature, and salinity (conductivity) continuously. Two of the moorings will be deployed for approximately one month (short-term moorings) and two moorings will be deployed for approximately one year (long-term moorings). The two short-term moorings and one long-term mooring will include ADCP paired with CTD recorders, and additional intermediate T (i.e., temperature) recorders. The characteristics of the ADCP units deployed on the moorings are similar to the Teledyne VM–150; the moored ADCPs operate at frequencies of 75 kHz (one unit) and 300 kHz (two units). The fourth mooring will be equipped with sediment traps, a CTD recorder and intermediate T recorders, and be deployed for approximately one year (long-term mooring). The two long-term moorings will be retrieved approximately one year later by a U.S. Arctic Program (USAP) vessel or collaborators from other countries.

Subject to sea ice conditions, these moorings will preferably be placed in front of Totten Glacier, but otherwise as close as possible inside adjacent cross-shelf troughs. If access to the inner shelf is not allowed by sea ice conditions, mooring deployments will be attempted within the outer shelf close to the troughs mouth, where the Totten Glacier is more directly connected to inflows from the oceanic domain offshore. The two long-term moorings will be deployed within 16 km of each other. The short-term moorings will be within a few kilometers of each other and no farther than 32 km (17.3 nmi) from the long-term moorings. All instruments will be kept at depths below 250 m (820.2 ft) to minimize damage or loss by icebergs.

The moorings will be temporarily attached to anchors and be recovered using acoustic release mechanisms. The mooring recovery process will be similar regardless of mooring type or when they will be retrieved. Locating the moorings and releasing the moorings from the steel railroad wheel anchors (which will not be recovered) will be accomplished by transmitting sound over a period of several seconds. This is done with an acoustic deck command unit that sends a sequence of coded pulses to the receiving units, the acoustic releases, connected to the mooring anchors. The acoustic releases response to acknowledge the receipt of commands from the deck unit is by transmitting a short sequence of pulses back. Both of the acoustic units (onboard deck unit and moored releases) operate at frequencies between approximately 7 and 15 kHz. The beam pattern is approximately omnidirectional. The acoustic source level is less than 192 dB re 1µPa at 1 m.

In addition to the U.S. moorings described above, three new moorings will be deployed on behalf of Australia's national science agency the Commonwealth of Scientific and Industrial Research Organisation (CSIRO) Physical Oceanography group in the Totten Glacier region by the project team. These moorings will be retrieved approximately one year later by collaborators from other countries. Also, during this cruise, three CSIRO moorings that were deployed over a year ago in the western outlet of the Mertz-Ninnis Trough will be recovered. The recovery process and acoustic sources described above for the U.S. moorings will be used for recovery of the CSIRO moorings.

Icebreaking

Icebreaking is considered by NMFS to be a continuous sound and NMFS estimates that harassment occurs when marine mammals are exposed to continuous sounds at a received sound level of 120 dB SPL or above. The *Palmer* operates at approximately 3 kts in pack ice and can operate in pack ice up to 0.9 m (3 ft) thick. Potential takes of marine mammals may ensue from icebreaking activity in which the *Palmer* is expected to engage in Antarctic waters (i.e., along the George V and Oates Coast of East Antarctica, >65° South, between 140 and 165° East and between approximately 65 to 66° South and between 95 to 135° East). While breaking ice, the noise from the ship, including impact with ice, engine noise, and propeller cavitation, will exceed 120 dB (rms) continuously. If icebreaking does occur in Antarctic waters, NMFS, NSF and ASC expect it will occur during transit and non-seismic operations to gain access to coring, dredging, or other sampling locations and not during seismic airgun operations. The research activities and associated contingencies are designed to avoid areas of heavy sea ice condition. The buffer zone (160 dB [rms]) for the marine mammal Level B harassment threshold during the planned airgun activities is much smaller than the calculated radius during icebreaking. If the *Palmer* breaks ice during the survey within the Antarctic waters (within the Dumont d'Urville Sea or other areas of the Southern Ocean), seismic airgun operations will not be conducted concurrently.

In 2008, acousticians from Scripps Institution of Oceanography Marine Physical Laboratory and University of New Hampshire Center for Coastal and Ocean Mapping conducted measurements of SPLs of the *Healy* icebreaking under various conditions (Roth and Schmidt, 2010). The results indicated that the highest mean SPL (185 dB) was measured at survey speeds of 4 to 4.5 kts in conditions of 5/10 ice and greater. Mean SPL under conditions where the ship was breaking heavy ice by backing and ramming was actually lower (180 dB). In addition, when backing and ramming, the vessel is essentially stationary, so the ensonified area is limited for a short period (on the order of minutes to tens of minutes) to the immediate vicinity of the vessel until the ship breaks free and once again makes headway.

The 120 dB received sound level radius around the *Healy* while icebreaking was estimated by researchers (USGS, 2010). Using a practical spreading model, a source level of 185 dB decays to 120 dB in about 21,544 m (70,684 ft). (Note: The proposed IHA used a spherical spreading model that predicted a distance of 1,750 m to 120 dB in deep water depths [greater than 1,000 m], this model was corroborated by Roth and Schmidt [2010]. A practical spreading model is now being used since the planned survey is occurring in

intermediate water depths [between 100 and 1,000 m].). Therefore, as the ship travels through the ice, a swath 21.54 km (11.63 nmi) wide may be subject to sound levels greater than or equal to 120 dB. This results in potential exposure of 21,540 km² (6,380.1 nmi²) to sounds greater than or equal to 120 dB from icebreaking.

Data characterizing the sound levels generated by icebreaking activities conducted by the *Palmer* are not available; therefore, data for noise generating from an icebreaking vessel such as the U.S. Coast Guard Cutter (USCGC) *Healy* will be used as a proxy. It is noted that the *Palmer* is a smaller vessel and has less icebreaking capability than the U.S. Coast Guard's other polar icebreakers, being only capable of breaking ice up to 1 m thick at speeds of 3 kts (5.6 km/hr or 3 nmi). Therefore, the sound levels that may be generated by the *Palmer* are expected to be lower than the conservative levels estimated and measured for the *Healy*. Researchers will work to minimize time spent breaking ice as science operations are more difficult to conduct in icy conditions since the ice noise degrades the quality of the seismic and ADCP data and time spent breaking ice takes away from time supporting scientific research. Logistically, if the vessel were in heavy ice conditions, researchers will not tow the airgun array and streamer, as this will likely damage equipment and generate noisy data. It is possible that the seismic survey can be performed in low ice conditions if the *Palmer* could generate an open path behind the vessel.

Because the *Palmer* is not rated to break multi-year ice routinely, operations generally avoid transiting through older ice (i.e., 2 years or older, thicker than 1 m). If sea ice is encountered during the cruise, it is anticipated the *Palmer* will proceed primarily through one year sea ice, and possibly some new, very thin ice, and will follow leads wherever possible. Satellite imagery from the Totten region documents that sea ice is at its minimum extent during the month of February. A recent image for the region, from November 21, 2013, shows that the sea ice is currently breaking up, with a significant coastal lead of open water. Based on a maximum sea ice extent of 250 km (135 nmi) and estimating that NSF and ASC will transit to the innermost shelf and back into open water twice, a round trip transit in each of the potential work regions, NSF and ASC estimate that the *Palmer* will actively break ice up to a distance of 1,000 km (540 nmi). Based on a ship's speed of 5 kts under moderate ice conditions, this distance represents approximately 108 hrs of icebreaking operations. It is noted that typical transit through areas primarily open water and containing brash ice or pancake ice will not be considered icebreaking.

Dates, Duration, and Specified Geographic Region

The planned project and survey sites are located in selected regions of the Dumont d'Urville Sea in the Southern Ocean off the coast of East Antarctica and focus on the Totten Glacier and Moscow University Ice Shelf, located on the Sabrina Coast, from greater than approximately 64° South and between approximately 95 to 135° East (see Figure 2 of the IHA application), and the Mertz Glacier and Cook Ice Shelf systems located on the George V and Oates Coast, from greater than approximately 65° South and between approximately 140 to 165° East in International Waters. The planned study sites are characterized by heavy ice cover, with a seasonal break-up in the ice that structures biological patterns. The planned studies will occur in both areas, or entirely in one or the other, depending on ice conditions. Figure 3 of the IHA application illustrates the limited detailed bathymetry of the two study areas. Ice conditions encountered during the previous surveys in the region limited the area where bathymetric data could be collected. Water depths in the survey area range from approximately 100 to 1,000 m, and possibly exceeding 1,000 m in some areas. There is limited information on the depths in the study area and therefore more detailed information on bathymetry is not available. Figures 2 and 3 of the IHA application illustrate the limited available detailed bathymetry of the two planned study areas due to ice conditions encountered during previous surveys in the region. The planned seismic survey will be within an area of approximately 5,628 km² (1,640.9 nmi²). This estimate is based on the maximum number of kilometers for the seismic survey (2,800 km) times the predicted rms radii (m) based on modeling and empirical measurements (assuming 100% use of the two 105 in³ GI airguns in 100 to 1,000 m water depths) which was calculated to be 1,005 m (3,297.2 ft) (multiplied by two to calculate the diameter of the buffer zone).

The icebreaking will occur, as necessary, between approximately 66 to 70° South and between 140 to 165° East and between approximately 65 to 66° South and between 95 to 135° East. The total distance in the region of the vessel will travel include the seismic survey and transit to dredging or sampling locations and will represent approximately 5,600 km (3,023.8 nmi). Based on a maximum sea ice extent of 250 km (135 nmi) and estimating that NSF and ASC will transit to the innermost shelf and back into open water twice, a round trip transit in each of the potential work regions, NSF and ASC estimate that the *Palmer* will actively break ice up to a distance of 1,000 km (540 nmi). Based on a ship's speed of 5 kts under moderate ice conditions, this distance represents approximately 108 hrs of icebreaking operations.

The *Palmer* is expected to depart from Hobart, Tasmania on approximately January 29, 2014 and return to Hobart, Tasmania on approximately March 16, 2014. Research operations will be over a span of 45-days, including to and from port. Ice-free or very low concentrations of sea ice are required in order to collect high quality seismic data and not impede passage of the vessel between sampling locations. This requirement restricts the cruise to operating in mid to late austral summer when the ice concentrations are typically the lowest. Some minor deviation from this schedule is possible, depending on logistics and weather (i.e., the cruise may depart earlier or be extended due to poor weather; there could be additional days of seismic operations if collected data are deemed to be of substandard quality).

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (79 FR 464, January 3, 2014). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, metrics, characteristics of airgun pulses, predicted sound levels of airguns, etc., the reader should refer to the notice of the proposed IHA (79 FR 464, January 3, 2014), the IHA application, IEE/EA, and associated documents referenced above this section.

Comments and Responses

A notice of the proposed IHA for the NSF and ASC low-energy seismic survey was published in the **Federal Register** on January 3, 2014 (79 FR 464). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one private citizen. The comments are online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are the

substantive comments and NMFS's responses:

Comment 1: The Commission recommends that NMFS require NSF and ASC to re-estimate the proposed exclusion and buffer zones and associated takes of marine mammals using site-specific parameters (including at least sound speed profiles, bathymetry, and sediment characteristics) for the proposed IHA—NMFS should make the same requirement for all future IHAs submitted by NSF, ASC, L–DEO, U.S. Geological Survey (USGS), Scripps Institution of Oceanography (SIO), or any other related entity.

Response: NMFS acknowledges the Commission's concerns about L–DEO's current model for estimating exclusion and buffer zones. We also acknowledge L–DEO did not incorporate site-specific sound speed profiles, bathymetry, and sediment characteristics of the research area into their current model to estimate those zones for this IHA.

During a March 2013 meeting, L–DEO discussed the L–DEO model with the Commission, NMFS, and NSF. L–DEO compared the Gulf of Mexico (GOM) calibration measurements (Tolstoy *et al.*, 2004; Tolstoy *et al.*, 2009; Diebold *et al.*, 2010) comparison with L–DEO model results, and explained correction factors used in previous EAs to adapt the deep-water model results for intermediate water depth environment. L–DEO showed that at the calibration sites the model overestimated the size of the exclusion zones and, therefore, is likely precautionary in most cases. Based on the best available information that the current model overestimates mitigation zones, we will not require L–DEO to re-estimate the proposed buffer and exclusion zones and associated number of marine mammal takes using operational and site-specific environmental parameters for this IHA.

However, we continue to work with the NSF and L–DEO on verifying the accuracy of their model. L–DEO is currently analyzing whether received levels can be measured in real-time using the ship's hydrophone streamer to estimate the sound field around the ship and determine actual distances to the buffer and exclusion zones. Crone *et al.* (2013) are analyzing R/V *Marcus G. Langseth* streamer data collected in 2012 off the Washington coast shelf and slope to measure received levels in situ up to 8 km (4.3 nmi) away from the ship. While results confirm the role that bathymetry plays in propagation, it also confirmed that empirical measurements from the GOM survey used to inform buffer and exclusion zones in shallow water and model results adapted for intermediate water depths also over-estimated the size of the zones for the Washington survey. Preliminary results were presented in a poster session at the American Geophysical Union fall meeting in December 2013 (Crone *et al.*, 2013; available at: *http://berna.ldeo.columbia.edu/agu2013/agu2013.pdf*) and a peer-reviewed journal publication is anticipated in 2014. When available, we will review and consider the final results and how they reflect on the L–DEO model.

Comment 2: The Commission recommends that NMFS (1) require NSF and ASC to revise its take estimates to include Level B harassment takes associated with the use of the single-beam and multi-beam echosounder when the airgun array is not firing and (2) follow a consistent approach of requiring the assessment of Level B harassment takes for those types of sound sources (e.g., sub-bottom profilers, echosounders, side-scan sonar, and fish-finding sonar) by all applicants, who propose to use such sources.

Response: As described in NSF's application and the NSF/USGS PEIS (2011), they expect the sound levels produced by the single-beam and multi-beam echosounder, ADCP, sub-bottom profiler sound sources to be exceeded by the sound levels produced by the airguns for the majority of the time. Additionally, because of the beam pattern and directionality of these sources, combined with their lower source levels, it is far less likely that these sources (which are used in some capacity by the vast majority of vessels on the water) will take marine mammals independently from the takes that have already been estimated for the airguns. Therefore, NMFS does not believe it is necessary to authorize additional takes for these sources for the action. Nonetheless, NMFS is currently evaluating the broader use of these types of sources to determine under what specific circumstances coverage for incidental take would be advisable (or not) and is working on guidance that would outline a consistent recommended approach (to be used by applicants and NMFS) for addressing the potential impacts of these types of sources.

Comment 3: The Commission recommends that NMFS require NSF and ASC to estimate the numbers of marine mammals taken when the single-beam and multi-beam echosounder are used in the absence of the airgun array based on the 120 rather than 160 dB re: 1 μPa (rms) threshold.

Response: NMFS disagrees with the Commission's recommendation that NMFS require NSF and ASC to estimate the number of marine mammals taken when the single-beam and multi-beam echosounder, ADCP, and sub-bottom profiler are used in absence of the airgun array based on the 120 dB (rms) threshold rather than the 160 dB (rms) threshold. 160 dB (rms) is the appropriate threshold for these sound sources. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, echosounder signals are not continuous sounds but rather intermittent sounds. Intermittent sounds can further be defined as either impulsive or non-impulsive. Impulsive sounds have been defined as sounds which are typically transient, brief (less than 1 second), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Echosounder signals also have durations that are typically very brief (less than 1 second), with temporal characteristics that more closely resemble those of impulsive sounds than non-impulsive sounds, which typically have more gradual rise times and longer decays (ANSI, 1995; NIOSH, 1998). With regard to behavioral thresholds, we therefore consider the temporal and spectral characteristics of echosounder signals to more closely resemble those of an impulsive sound than a continuous sound.

The Commission suggests that, for certain sources considered here, the interval between pulses would not be discernible to the animal, thus rendering them effectively continuous. However, an echosounder's ''rapid staccato'' of pulse trains is emitted in a similar fashion as odontocete echolocation click trains. Research indicates that marine mammals, in general, have extremely fine auditory temporal resolution and can detect each signal separately (e.g., Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009), especially for species with echolocation capabilities. Therefore, it is highly unlikely that marine mammals would perceive echosounder signals as being continuous.

In conclusion, echosounder, ADCP, and sub-bottom profiler signals are intermittent rather than continuous signals, and the fine temporal resolution of the marine mammal auditory system allows them to perceive these sounds as such. Further, the physical characteristics of these signals indicate a greater similarity to the way that

intermittent, impulsive sounds are received. Therefore, the 160 dB threshold (typically associated with impulsive sources) is more appropriate than the 120 dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

Comment 4: The Commission recommends that NMFS consult with experts in the field of acoustics and marine mammal hearing to revise the Level B harassment thresholds for behavior to specify threshold levels that would be more appropriate for a wider range of sound sources, including shallow penetration sub-bottom profilers, echosounders, and side-scan sonars—if NMFS plans to propose behavior thresholds for seismic surveys separate from other activities, include thresholds for all types of sources that are used, not just for airguns.

Response: NMFS agrees with the Commission's recommendation to revise existing acoustic criteria and thresholds as necessary to specify threshold levels that would be more appropriate for a wider range of sound sources, and are currently in process of producing such revisions. In particular, NMFS recognizes the importance of context (e.g., behavioral state of animals, distance) in behavioral responses. The current behavioral categorization (i.e., impulse versus continuous) does not account for context and is not appropriate for all sound sources. Thus, updated NOAA Acoustic Guidance *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*) will more appropriately categorize behavioral harassment criteria by activity type.

Comment 5: The Commission recommends that NMFS consult with the funding agency (i.e., NSF) and individual applicants (e.g., ASC, L–DEO, SIO, USGS, etc.) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal takes and the actual numbers of marine mammals taken—the assessment should account for applicable g(0) and f(0) values.

Response: There will be periods of transit time during the cruise, and PSOs will be on watch prior to and after the seismic airgun operations and icebreaking portions of the surveys, in addition to during the surveys. The collection of this visual observational data by PSOs may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers (as well as providing data regarding behavioral responses to seismic operation that are observable at the surface), but is unlikely that the information gathered from these cruises alone would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

NMFS is currently working to develop recommendations for how applicants can appropriately correct marine mammal detections to better estimate the number of animals likely taken during specified activities, in consideration of those that are not detected.

Comment 6: The Commission recommends that NMFS (1) provide a full 30-day public review and comment period that starts with the publication of notices in the printed edition of the **Federal Register** and (2) allow sufficient time after the close of the comment period and prior to issuance of an IHA to allow the agency to analyze, consider, respond to, and make any necessary changes to the proposed authorization of NMFS's rationale based on those comments.

Response: Section 101(a)(5)(D) of the MMPA establishes a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. NMFS's standard procedure is to have a 30-day public comment period that extends from publication in the **Federal Register** to the closure date specified in the notice of the proposed IHA (with an additional 2 days for those that check the electronic version available online). The public was afforded a 30-day comment period to review and submit information and suggestions on the proposed IHA with the electronic availability of the notice of proposed IHA and making preliminary determinations available on the **Federal Register**'s Web site on December 31, 2013. On January 3, 2014, NMFS published the notice in the **Federal Register** (79 FR 464). On January 7, 2014, NMFS published a notice in the **Federal Register** correcting the dates in the issue of Friday, January 3, 2014 ''. . . on page 464, in the first column, in the 41st through 42nd lines, 'February 3, 2014 should read 'January 30, 2014'' (79 FR 816). NMFS fully intends to have a 30-day public comment period on all future notices of proposed IHA published in the **Federal Register**, but in this particular case operational needs supported the use of a 30-day public comment period from electronic filing to closure in order to ensure that NMFS had adequate time to address public comments before making a decision of whether to issue an IHA to NSF and ASC in time for the needed start date of the seismic survey.

NMFS has been issuing MMPA authorizations to NSF to conduct these activities for approximately 10 years, which has allowed NMFS to develop relatively standard mitigation and monitoring requirements for these activities, so rarely more than one or two public comments are received. NMFS received only comments from the Commission and a private citizen during the 30-day public review and comment period. NMFS believes it has sufficient time after the close of the comment period and prior to issuance of an IHA to allow the agency to analyze, consider, respond to, and make any necessary changes to the proposed IHA of the rationale based on those comments.

Comment 7: An individual opposes the issuance of the IHA to NSF and ASC, who also states that NSF and ASC's project is killing marine mammals.

Response: As described in detail in the **Federal Register** notice for the proposed IHA (79 FR 464, January 3, 2014), as well as in this document, NMFS determined that NSF and ASC's low-energy seismic survey will not cause injury, serious injury, or mortality to marine mammals. The required monitoring and mitigation measures that NSF and ASC will implement during the low-energy seismic survey will further reduce the adverse effects on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the low-energy seismic survey.

Description of the Marine Mammals in the Specified Geographic Area of the Specified Activity

The marine mammals that generally occur in the planned action area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and pinnipeds (seals and sea lions). The marine mammal species that potentially occur within the Southern Ocean in proximity to the action area in the Dumont d'Urville Sea include 28 species of cetaceans and 6 species of pinnipeds.

The Dumont d'Urville Sea may be a feeding ground for many of these marine mammals. Many of the species that may be potentially present in the study area seasonally migrate to higher latitudes along the east coast of Antarctica. In general, most species (except for the killer whale) migrate north in the middle of the austral winter and return to Antarctica in the early austral

summer. Some species, particularly Antarctic minke (*Balaenoptera bonaerensis*) and killer whales (*Orcinus orca*), are expected to be present in higher concentrations along the ice edge (SCAR, 2002). The 6 species of pinnipeds that are found in the Southern Ocean and which may be present in the planned study area include the crabeater (*Lebodon carcinophagus*), leopard (*Hydrurga leptonyx*), Weddell (*Leptonychotes weddellii*), Ross (*Ommatophoca rossii*), southern elephant (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*). Many of these pinniped species breed on either the pack ice or sub-Antarctic islands. Since the southern elephant seal and Antarctic fur seal haul-outs and rookeries are located on sub-Antarctic islands and prefer beaches, they are more common north of the seasonally shifting pack ice found in the study area; therefore, these two species have not been considered further. Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), include the southern right (*Eubalaena australis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale. Of those endangered species, the humpback, sei, fin, blue, and sperm whale are likely to be encountered in the survey area.

Various national Antarctic research programs along the coast of East Antarctica have conducted scientific cruises that included data on marine mammal sightings. These observations were made primarily between 30deg; East and 170° East and north to 60° South. The reported cetacean sightings are summarized in Tables 5 to 7 of the IHA application. For pinnipeds, observations made during a scientific cruise over a 13-day period in East Antarctica are summarized in Table 9 of the IHA application. These observations were made below 60° South and between 110° East to 165° East and include sightings of individual animals in the water as well as individuals that were hauled-out (i.e., resting on the surface of the sea ice).

Records from the International Whaling Commission's Southern Ocean Whale and Ecosystem Research (IWC–SOWER) circumpolar cruises were also considered. In addition to the 14 species known to occur in the Dumont d'Urville Sea of the Southern Ocean, there are 18 cetacean species with ranges that are known to occur in the sub-Antarctic waters of the study area which may also feed and/or migrate to the Southern Ocean during the austral summer, these include the southern right, pygmy right (*Caperea marginata*), Bryde's (*Balaenoptera brydei*), dwarf minke (*Balaenoptera acutorostrata* spp.), pygmy blue (*Balaenoptera musculus brevicauda*), pygmy dwarf sperm whale (*Kogia breviceps*), Arnoux's beaked (*Berardius arnuxii*), Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked (*Ziphius cavirostris*), Shepherd's beaked (*Tasmacetus shepherdi*), Southern bottlenose (*Hyperoodon planifrons*), Andrew's beaked (*Mesoplodon bowdoini*), Hector's beaked (*Mesoplodon hectori*), Gray's beaked (*Mesoplodon grayi*), strap-toothed beaked (*Mesoplodon layardii*), spade-toothed beaked (*Mesoplodon traversii*), southern right whale dolphin (*Lissodelphis peronii*), Dusky (*Lagenorhynchus obscurus*), and bottlenose dolphin (*Tursiops truncatus*). However, these species have not been sighted and are not expected to occur where the planned activities will take place. These species are not considered further in this document. Table 3 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the planned study area during January to March 2014.

TABLE 3—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE LOW-ENERGY SEISMIC SURVEY AREA IN THE ANTARCTIC AREA OF THE SOUTHERN OCEAN

[See Text and Tables 4 In NSF and ASC's Application For Further Details]

Species	Habitat	Population estimate	ESA [1]	MMPA [2]	Population trend
Mysticetes:					
Southern right whale (*Eubalaena australis*)	Coastal, pelagic	8,000 [3] to 15,000 [4]	EN	D	Increasing.
Pygmy right whale (*Caperea marginata*)	Coastal, pelagic	NA	NL	NC	NA.
Humpback whale (*Megaptera novaeangliae*).	Pelagic, nearshore waters, and banks.	35,000 to 40,000 [3]—Worldwide 9,484 [5]—Scotia Sea and Antarctica Peninsula.	EN	D	Increasing.
Dwarf minke whale (*Balaenoptera acutorostrata* sub-species).	Pelagic and coastal	NA	NL	NC	NA.
Antarctic minke whale (*Balaenoptera bonaerensis*).	Pelagic, ice floes	Several 100,000 [3]—Worldwide 18,125 [5]—Scotia Sea and Antarctica Peninsula.	NL	NC	Stable.
Bryde's whale (*Balaenoptera brydei*)	Pelagic and coastal	NA	NL	NC	NA.
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic.	80,000 [3]—Worldwide	EN	D	NA.
Fin whale (*Balaenoptera physalus*)	Continental slope, pelagic.	140,000 [3]—Worldwide 4,672 [5]—Scotia Sea and Antarctica Peninsula.	EN	D	NA.
Blue whale (*Balaenoptera musculus*)	Pelagic, shelf, coastal	8,000 to 9,000 [3]—Worldwide 1,700 [6]—Southern Ocean.	EN	D	NA.
Odontocetes:					
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep sea	360,000 [3]—Worldwide 9,500 [3]—Antarctic.	EN	D	NA.
Pygmy sperm whale (Kogia breviceps)	Pelagic, slope	NA	NL	NC	NA.
Arnoux's beaked whale (*Berardius arnuxii*)	Pelagic	NA	NL	NC	NA.

TABLE 3—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE LOW-ENERGY SEISMIC SURVEY AREA IN THE ANTARCTIC AREA OF THE SOUTHERN OCEAN—Continued

[See Text and Tables 4 In NSF and ASC's Application For Further Details]

Species	Habitat	Population estimate	ESA [1]	MMPA [2]	Population trend
Blainville's beaked whale (*Mesoplodon densirostris*).	Pelagic	NA	NL	NC	NA.
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	NA	NL	NC	NA.
Shepherd's beaked whale (Tasmacetus shepherdi).	Pelagic	NA	NL	NC	NA.
Southern bottlenose whale (*Hyperoodon planifrons*).	Pelagic	500,000 [3]—South of Antarctic Convergence.	NL	NC	NA.
Andrew's beaked whale (*Mesoplodon bowdoini*).	Pelagic	NA	NL	NC	NA.
Hector's beaked whale (*Mesoplodon hectori*).	Pelagic	NA	NL	NC	NA.
Gray's beaked whale (*Mesoplodon grayi*) ..	Pelagic	NA	NL	NC	NA.
Strap-toothed beaked whale (*Mesoplodon layardii*).	Pelagic	NA	NL	NC	NA.
Spade-toothed beaked whale (*Mesoplodon traversii*).	Pelagic	NA	NL	NC	NA.
Killer whale (*Orcinus orca*)	Pelagic, shelf, coastal, pack ice.	80,000 [3]—South of Antarctic Convergence 25,000 [7]—Southern Ocean.	NL	NC	NA.
Long-finned pilot whale (*Globicephala melas*).	Pelagic, shelf, coastal	200,000 [3 8]—South of Antarctic Convergence.	NL	NC	NA.
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, inshore, coastal, estuaries.	>625,500 [3]—Worldwide	NL	NC	NA.
Southern right whale dolphin (*Lissodelphis peronii*).	Pelagic	NA	NL	NC	NA.
Dusky dolphin (*Lagenorhynchus obscurus*)	Coastal, continental shelf and slope.	NA	NL	NC	NA.
Hourglass dolphin (*Lagenorhynchus cruciger*).	Pelagic, ice edge	144,000 [3]	NL	NC	NA.
Spectacled porpoise (*Phocoena dioptrica*)	Coastal, pelagic	NA	NL	NC	NA.
Pinnipeds:					
Crabeater seal (*Lobodon carcinophaga*)	Coastal, pack ice	5,000,000 to 15,000,000 [3 9].	NL	NC	Increasing.
Leopard seal (*Hydrurga leptonyx*)	Pack ice, sub-Antarctic islands.	220,000 to 440,000 [3 10]	NL	NC	NA.
Ross seal (*Ommatophoca rossii*)	Pack ice, smooth ice floes, pelagic.	130,000 [3]	NL	NC	NA.
Weddell seal (*Leptonychotes weddellii*)	Fast ice, pack ice, sub-Antarctic islands.	500,000 to 1,000,000 [3 11].	NL	NC	NA.
Southern elephant seal (*Mirounga leonina*)	Coastal, pelagic, sub-Antarctic waters.	640,000 [12] to 650,000 [3]	NL	NC	Decreasing, increasing or stable depending on breeding population.
Antarctic fur seal (*Arctocephalus gazella*) ..	Shelf, rocky habitats	1,600,000 [13] to 3,000,000 [3].	NL	NC	Increasing.

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] Jefferson *et al.,* 2008.
[4] Kenney, 2009.
[5] Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) survey area (Reilly *et al.,* 2004).
[6] Sears and Perrin, 2009.
[7] Ford, 2009.
[8] Olson, 2009.
[9] Bengston, 2009.
[10] Rogers, 2009.
[11] Thomas and Terhune, 2009.
[12] Hindell and Perrin, 2009.
[13] Arnould, 2009.

Refer to sections 3 and 4 of NSF and ASC's IHA application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the project area. The IHA application also presents how NSF and ASC calculated the estimated densities for the marine mammals in the survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the planned survey area. The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the planned project will result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected. A more comprehensive review of these issues can be found in the ''Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research funded by the National Science Foundation or conducted by the U.S. Geological Survey'' (NSF/USGS, 2011).

The notice of the proposed IHA (79 FR 464, January 3, 2014) included a discussion of the effects of sounds from airguns, icebreaking activities, core and dredge sampling, and other acoustic devices and sources on mysticetes, odontocetes, and pinnipeds including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. The notice of the proposed IHA (79 FR 464, January 3, 2014) also included a discussion of the effects of vessel movement and collisions as well as entanglement. NMFS refers readers to NSF and ASC's application and IEE/EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels.

Anticipated Effects on Marine Mammal Habitat, Fish, and Invertebrates

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish, fisheries, and invertebrates in the notice of the proposed IHA (79 FR 464, January 3, 2014). The seismic survey will not result in any permanent impact on habitats used by the marine mammals in the survey area, including the food sources they use (i.e., fish and invertebrates), and there will be no physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and inconsequential, which was considered in further detail in the notice of the proposed IHA (79 FR 464, January 3, 2014), as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

NSF and ASC reviewed the following source documents and have incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the recently completed NSF/USGS PEIS (2011);

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, NSF, ASC and/or its designees are required to implement the following mitigation measures for marine mammals:

(1) Exclusion zones around the sound source;

(2) Speed and course alterations;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

Exclusion Zones—During pre-planning of the cruise, the smallest airgun array was identified that could be used and still meet the geophysical scientific objectives. NSF and ASC use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 4 (see below) shows the distances at which one would expect to receive three sound levels (160, 180, and 190 dB) from the two GI airgun array. The 180 and 190 dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000). NSF and ASC used these levels to establish the exclusion and buffer zones.

Received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 45 in^3 Nucleus G airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). In addition, propagation measurements of pulses from two GI airguns have been reported for shallow water (approximately 30 m [98.4 ft] depth in the GOM (Tolstoy *et al.,* 2004). However, measurements were not made for the two GI airguns in deep water. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels are predicted to be 190, 180, and 160 dB re 1 μPa (rms) in intermediate and deep water were determined (see Table 4 below).

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009). Results of the 36 airgun array are not relevant for the two GI airguns to be used in the planned survey. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). Measurements were not made for the two GI airgun array in deep water; however, NSF and ASC propose to use the exclusion zone radii predicted by L–DEO's model for the planned GI airgun operations in intermediate and deep water, although they are likely conservative given the empirical results for the other arrays.

Based on the modeling data, the outputs from the pair of 45 in^3 or 105 in^3 GI airguns planned to be used during the seismic survey are considered a low-energy acoustic source in the NSF/USGS PEIS (2011) for marine seismic research. A low-energy seismic source was defined in the NSF/USGS PEIS as an acoustic source whose received level at 100 m is less than 180 dB. The NSF/USGS PEIS also established for these low-energy sources, a standard exclusion zone of 100 m for all low-energy sources in water depths greater

than 100 m. This standard 100 m exclusion zone will be used during the planned low-energy seismic survey. The 180 and 190 dB (rms) radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish exclusion zones. Therefore, the assumed 180 and 190 dB radii are 100 m for intermediate and deep water, respectively. If the PSO detects a marine mammal(s) within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately.

Table 4 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the two airgun array (45 in^3 or 105 in^3) operating in intermediate (100 to 1,000 m) and deep water (greater than 1,000 m) depths.

Table 4. Predicted and modeled (two 45 in^3 and two 105 in^3 GI airgun array) distances to which sound levels ≥190, 180 and 160 dB re: 1 μPa (rms) could be received in intermediate and deep water during the planned low-energy seismic survey in the Dumont d'Urville Sea of the Southern Ocean, January to March 2014. No airgun operations will occur in shallow (<100 m) water depths.

Source and total volume	Tow depth (m)	Water depth (m)	Predicted RMS radii distances (m) for 2 GI airgun array		
			160 dB	180 dB	190 dB
Two 45 in^3 GI Airguns (90 in^3).	3	Intermediate (100 to 1,000) ..	600 (1,968.5 ft)	100 (328 ft)	100
Two 45 in^3 GI Airguns (90 in^3).	3	Deep (>1,000)	400 (1,312.3 ft)	100	100
Two 105 in^3 GI Airguns (210 in^3).	3	Intermediate (100 to 1,000) ..	1,005 (3,297.2 ft)	100	100
Two 105 in^3 GI Airguns (210 in^3).	3	Deep (>1,000)	670 (2,198.2 ft)	100	100

Speed and Course Alterations—If a marine mammal is detected outside the exclusion zone and, based on its position and direction of travel (relative motion), is likely to enter the exclusion zone, changes of the vessel's speed and/or direct course will be considered if this does not compromise operational safety or damage the deployed equipment. This will be done if operationally practicable while minimizing the effect on the planned science objectives. For marine seismic surveys towing large streamer arrays, however, course alterations are not typically implemented due to the vessel's limited maneuverability. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the exclusion zone. If the marine mammal appears likely to enter the exclusion zone, further mitigation actions will be taken, including further speed and/or course alterations, and/or shut-down of the airgun(s). Typically, during seismic operations, the source vessel is unable to change speed or course, and one or more alternative mitigation measures will need to be implemented.

Shut-Down Procedures—NSF and ASC will shut-down the operating airgun(s) if a marine mammal is detected outside the exclusion zone for the airgun(s), and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the exclusion zone, the seismic source will be shut-down before the animal is within the exclusion zone. Likewise, if a marine mammal is already within the exclusion zone when first detected, the seismic source will be shut-down immediately.

Following a shut-down, NSF and ASC will not resume airgun activity until the marine mammal has cleared the exclusion zone. NSF and ASC will consider the animal to have cleared the exclusion zone if:

- A PSO has visually observed the animal leave the exclusion zone, or
- A PSO has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes and pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, killer, and beaked whales).

Although power-down procedures are often standard operating practice for seismic surveys, they are not going to be used during this planned seismic survey because powering-down from two airguns to one airgun will make only a small difference in the exclusion zone(s)—but probably not enough to allow continued one-airgun operations if a marine mammal came within the exclusion zone for two airguns.

Ramp-Up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns and to provide the time for them to leave the area avoiding any potential injury or impairment of their hearing abilities. NSF and ASC will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down shut down has exceeded that period. NSF and ASC plans that, for the present cruise, this period will be approximately 15 minutes. SIO, L–DEO, and USGS have used similar periods (approximately 15 minutes) during previous low-energy seismic surveys.

Ramp-up will begin with a single GI airgun (45 or 105 in^3). The second GI airgun (45 or 105 in^3) will be added after 5 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if marine mammals are sighted, a shut-down will be implemented as though both GI airguns were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, NSF and ASC will not commence the ramp-up. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array will not be visible during those conditions. If one airgun has operated, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, but only where the exclusion zone is small enough to be visible. NSF and ASC will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion

zones during the day or close to the vessel at night.

NMFS has carefully evaluated the applicant's mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring

NSF and ASC will conduct marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. NSF and ASC's ''Monitoring Plan'' is described below this section. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. NSF and ASC will discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

NSF and ASC's PSOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during icebreaking activities, daytime airgun operations (austral summer) and during any ramp-ups of the airguns at night. Generally, nighttime operations of the airguns are not anticipated. PSOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shut-down (i.e., greater than approximately 15 minutes for this low-energy seismic survey). When feasible, PSOs will conduct observations during daytime periods when the seismic system is not operating (such as during transits) for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSO observations, the airguns will be shut-down when marine mammals are observed within or about to enter a designated exclusion zone. The exclusion zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the Dumont d'Urville Sea of the Southern Ocean, at least two PSOs will be based aboard the *Palmer.* At least one PSO will stand watch at all times while the *Palmer* is operating airguns during the low-energy seismic survey; this procedure will also be followed when the vessel is conducting icebreaking during transit. NSF and ASC will appoint the PSOs with NMFS's concurrence. The lead PSO will be experienced with marine mammal species in the Southern Ocean, the second PSO will receive additional specialized training from the PSO to ensure that they can identify marine mammal species commonly found in the Southern Ocean. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, at least one PSO will be on duty from observation platforms (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. PSO(s) will be on duty in shifts no longer than 4 hours in duration. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the low-energy seismic survey, the crew will be given additional instruction on how to do so. (Note: Because of the high latitude locations of the study areas, twilight/darkness conditions are expected to be limited to between 3 and 6 hours per day during the planned action.)

The *Palmer* is a suitable platform for marine mammal observations and will serve as the platform from which PSOs will watch for marine mammals before and during seismic operations. Two locations are likely as observation stations onboard the *Palmer.* Observing stations are located on the bridge level, with the PSO eye level at approximately 16.5 m (54.1 ft) above the waterline and the PSO will have a good view around the entire vessel. In addition, there is an aloft observation tower for the PSO approximately 24.4 m (80.1 ft) above the waterline that is protected from the weather, and affords PSOs an even greater view. Standard equipment for PSOs will be reticle binoculars. Night-vision equipment will not be available or required due to the constant daylight conditions during the Antarctic summer. The PSOs will be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shut-down. Observing stations will be at the bridge level and the aloft observation tower. The approximate view around the vessel from the bridge is 270° and 360° from the aloft observation tower. During daytime, the PSO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7×50 Fujinon FMTRC–SX) and the naked eye. These binoculars will have a built-in daylight compass. Estimating distances is done primarily with the reticles in the binoculars. The PSO(s) will be in direct (radio) wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory during seismic operations, so they can advise the vessel operator, science support personnel, and the science party promptly of the need for avoidance maneuvers or a shut-down of the seismic source. PSOs will monitor for the presence pinnipeds and cetaceans during icebreaking activities, and will be limited to those marine mammal species in proximity to the ice margin habitat. Observations within the buffer zone will also include pinnipeds that may be present on the surface of the sea ice (i.e., hauled-out) and that could potentially dive into the water as the vessel approaches, indicating disturbance from noise generated by icebreaking activities.

When marine mammals are detected within or about to enter the designated exclusion zone, the airguns will

immediately be shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the exclusion zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, killer, and beaked whales).

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially ''taken'' by harassment (as defined in the MMPA). They will also provide information needed to order a shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during icebreaking activities as well as daytime periods when the *Palmer* is underway without seismic operations (i.e., transits, to, from, and through the study area) to collect baseline biological data.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, wind force, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding ramp-ups or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The data accuracy will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database by the PSOs at sea. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide the following information:

1. The basis for real-time mitigation (airgun shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

NSF and ASC will submit a comprehensive report to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report submitted to NMFS will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (i.e., dates, times, locations, activities, and associated seismic survey activities). The report will include:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for Beaufort sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including Beaufort sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals sightings including date, water depth, numbers, age/size/gender, and group sizes; and analyses of the effects of seismic operations;
- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha.*

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), NSF and ASC will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov.* The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with NSF and ASC to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NSF and ASC may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that NSF and ASC discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), NSF and ASC will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov.* The report

must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NSF and ASC to determine whether modifications in the activities are appropriate.

In the event that NSF and ASC discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate or advanced decomposition, or scavenger damage), NSF and ASC will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, within 24 hours of discovery. NSF and ASC will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Level B harassment of marine mammals is anticipated to result from the low-energy marine seismic survey in the Dumont d'Urville Sea off the coast of East Antarctica. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array and icebreaking activities are expected to result in the behavioral disturbance of some marine mammals. There is no evidence that the planned activities could result in injury, serious injury, or mortality for which NSF and ASC seeks the IHA. The required mitigation and monitoring measures are expected to minimize any potential risk for injury, serious injury, or mortality.

The following sections describe NSF and ASC's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the low-energy seismic survey in the Dumont d'Urville Sea off the coast of East Antarctica. The estimates are based on a consideration of the number of marine mammals that could be harassed during the approximately 2,800 km (1,511.9 nmi) of seismic airgun operations with the two GI airgun array to be used and 1,000 km of icebreaking activities.

During simultaneous operations of the airgun array and the other sound sources, any marine mammals close enough to be affected by the single and multi-beam echosounders, pingers, ADCP, sub-bottom profiler, etc. would already be affected by the airguns. During times when the airguns are not operating, it is unlikely that marine mammals will exhibit more than minor, short-term responses to the echosounders, ADCPs, and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Therefore, for this activity, take was not authorized specifically for these sound sources beyond that which is already authorized for airguns and icebreaking activities.

There are no stock assessments and very limited population information available for marine mammals in the Dumont d'Urville Sea. Published estimates of marine mammal densities are not available for the Dumont d'Urville Sea. Sighting data from the Australian Antarctic Division's (AAD) BROKE-West surveys (1999) were used to determine and estimate marine mammals densities for mysticetes and odontocetes and AAD data components for pinnipeds (Southwell *et al.,* 2008; 2012), which were not available for the seismic survey's action area in the Dumont d'Urville Sea. The specific densities used for crabeater seals are based on data from Southwell *et al.* (2008) and for Weddell seals is based on NMFS Southwest Fisheries Science Center (2013) and IUCN data. While population density data for cetaceans in the Southern Ocean are sparse to nonexistent, reported sightings data from previous research cruises suggest cetaceans such as those identified in Table 12 of the IHA application span a range greater than 4,000 km (2,159.8 nmi) off the coast of East Antarctica. The AAD BROKE-West survey was not specifically designed to quantify marine mammals. Observations from this survey represent sightings from a discrete time period. The data were in terms of animals sighted per time unit, and the sighting data were then converted to an areal density (number of animals per square km) by multiplying the number of animals observed by the estimated area observed during the survey. As such, some marine mammals that were present in the area may not have been observed.

The estimated number of cetaceans and pinnipeds that may be potentially exposed to the seismic airgun operations and icebreaking activities were based on sighting data from previous research cruises over a 52-day period and 13-day period. Some of the AAD sighting data were used as the basis for estimating take included ''unidentified whale'' species, this category was retained and pro-rated to the other species because environmental conditions may be present during the planned action to limit identification of observed cetaceans. The estimated frequency of sightings data for cetaceans incorporates a correction factor of 5 that assumes only 20% of the animals present were reported due to sea ice and other conditions that may have hindered observation. The 20% factor was intended to conservatively account for this. A 40% correction factor to account for seals that may be in the water versus those hauled-out on ice surface was used for pinnipeds in the proposed IHA, but has since been removed. The 40% correction factor was removed as pinnipeds hauled-out on ice often flush into the water and may be exposed to sounds from the airgun operations or icebreaking activities from the *Palmer.* The correction factor for pinnipeds was conservatively based on Southwell *et al.* (2012), which estimated 20 to 40% of crabeater seals may be in the water in a particular area while the rest are hauled-out. The correction factor took into consideration some pinnipeds may not be observed due to poor visibility conditions.

Sightings data were collected by the AAD; however, the AAD methodology was not described. Density is generally reported in the number of animals per km or square km. Estimated area observed by observers was calculated by using the average vessel speed (5.6 km/hr) times the estimated hours of the survey to estimate the total distance covered for each of the surveys. This was then converted from the linear distance into an area by assuming a width of 5 km that could be reliably visually surveyed. Therefore, the estimated area was 5,753 km^2 (1,677.3 nmi^2) to obtain mysticete and odontocete densities and the estimated area was 1,419 km^2 (413.7 nmi^2) to obtain pinniped densities.

Of the six species of pinnipeds that may be present in the study area during the planned action, only four species are expected to be observed and occur mostly near pack ice or coastal areas

and are not prevalent in open sea areas where the low-energy seismic survey will be conducted. Because density estimates for pinnipeds in that Antarctic region typically represent individuals that have hauled-out of the water, those estimates are not representative of individuals that are in the water and could be potentially exposed to underwater sounds during the seismic airgun operations and icebreaking activities; therefore, the pinniped densities have been adjusted to account for this concern. Take was not requested for southern elephant seals and Antarctic fur seals because preferred habitat for these species is not within the planned action area. Although no sightings of Weddell seals and spectacled porpoises were reported in the BROKE-West sighting data, take was requested for these species based on NMFS recommendation and IWC SOWER data. Although there is some uncertainty about the representativeness of the data and the assumptions used in the calculations below, the approach used here is believed to be the best available approach.

Table 5. Estimated densities and possible number of marine mammal species that might be exposed to greater than or equal to 120 dB (icebreaking) and 160 dB (airgun operations) during NSF and ASC's planned low-energy seismic survey (approximately 1,000 km of tracklines/approximately 21,540 km^2 ensonified area for icebreaking activities and approximately 2,800 km of tracklines/approximately 5,628 km^2 ensonified area for airgun operations) in the Dumont d'Urville Sea of the Southern Ocean, January to March 2014.

Species	Reported sightings[1 2] *sightings have been pro-rated to include unidentified animals*	Corrected sightings (assume 20% for cetaceans)	Density (#/km^2)	Calculated take from seismic airgun operations (i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 µPa)[3]	Calculated take from icebreaking activities (i.e., estimated number of individuals exposed to sound levels ≥ 120 dB re 1 µPa)[4]	Approximate percentage of population estimate (calculated total take)[5]	Total take authorized[6]
Mysticetes:							
Southern right whale	0	0	0	0	0	0	0
Humpback whale	238	1,190	0.1029768	580	2,218	8.0	580 + 2,218 = 2,798
Antarctic minke whale	136	680	0.0588439	331	1,267	0.53	331 + 1,267 = 1,598
Sei whale	4	20	0.0017307	10	37	0.06	10 + 37 = 47
Fin whale	232	1,160	0.1003808	565	2,162	1.9	565 + 2,162 = 2,727
Blue whale	2	10	0.0008654	5	19	1.4	5 + 19 = 24
Odontocetes:							
Sperm whale	32	160	0.0138456	78	298	3.9	78 + 298 = 376
Arnoux's beaked whale ..	0	0	0	0	0	NA	0
Cuvier's beaked whale ...	0	0	0	0	0	NA	0
Southern bottlenose whale.	0	0	0	0	0	NA	0
Killer whale	62	310	0.0268259	151	578	2.9	151 + 578 = 729
Long-finned pilot whale ..	24	120	0.0103842	58	224	0.1	58 + 224 = 282
Hourglass dolphin	26	130	0.0112496	63	242	0.2	63 + 242 = 305
Spectacled porpoise	33	165	0.0142783	80	308	NA	80 + 308 = 388
Pinnipeds:							
Crabeater seal	NA	NA	0.868000	4,885	18,697	0.5	4,885 + 18,697 = 23,582
Leopard seal	17	24	0.051486	290	1,109	0.6	290 + 1,109 = 1,399
Ross seal	42	59	0.127201	716	2,740	2.7	716 + 2,740 = 3,456
Weddell seal	NA	NA	0.0756	425	1,628	0.4	425 + 1,628 = 2,053
Southern elephant seal ..	0	0	0	0	0	NA	0
Antarctic fur seal	0	0	0	0	0	NA	0

NA = Not available or not assessed.

[1] Sightings from a 52 day (5,753 km^2) period on the AAD BROKE-West survey during January to March 2006.

[2] Sightings December 3 to 16, 1999 (1,420 km^2 and 75,564 km^2) below 60° South latitude between 110 to 165° East longitude. All sightings were animals hauled-out of the water and on the sea ice.

[3] Calculated take is estimated density (reported density times correction factor) multiplied by the area ensonified to 160 dB (rms) around the planned seismic lines, increased by 25% for contingency.

[4] Calculated take is estimated density (reported density) multiplied by the area ensonified to 120 dB (rms) around the planned transit lines where icebreaking activities may occur.

[5] Total requested (and calculated) takes expressed as percentages of the species or regional populations.

[6] Requested Take Authorization includes unidentified animals that were added to the observed and identified species on a pro-rated basis.

Note: Take was not requested for southern elephant seals and Antarctic fur seals because preferred habitat for these species is not within the action area.

Icebreaking in Antarctic waters will occur, as necessary, between the latitudes of approximately 66 to 70° South and between 140 and 165° East, and between approximately 65 to 66° South and between 95 to 135° East. Based on a maximum sea ice extent of 250 km and estimating that the *Palmer* will transit to the innermost shelf and back into open water twice—a round trip transit in each of the potential work regions, it is estimated that the *Palmer* will actively break ice up to a distance of 1,000 km. Based on the ship's speed of 5 kts under moderate ice conditions, this distance represents approximately 108 hrs of icebreaking operations. This calculation is likely an overestimation because icebreakers often follow leads when they are available and thus do not break ice at all times.

Numbers of marine mammals that might be present and potentially disturbed are estimated based on the available data about marine mammal distribution and densities in the Southern Ocean study are during the austral summer. NSF and ASC estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 µPa (rms) for seismic airgun operations and greater than or equal to 120 dB re 1 µPa (rms) for icebreaking activities on one or more occasions by considering the total marine area that will be within the 160 dB radius around the operating airgun array and 120 dB radius for the icebreaking activities on at least one occasion and the expected density of marine mammals in the area (in the

absence of the a seismic survey and icebreaking activities). The number of possible exposures can be estimated by considering the total marine area that will be within the 160 dB radius (i.e., diameter is 1,005 m times 2) around the operating airguns. The ensonified area for icebreaking was estimated by multiplying the distance of the icebreaking activities (1,000 km) by the estimated diameter of the area within the 120 dB radius (i.e., diameter is 21,544 m). The 160 dB radii are based on acoustic modeling data for the airguns that may be used during the action (see Attachment B of the IHA application). As summarized in Table 2 (see Table 11 of the IHA application), the modeling results for the planned low-energy seismic airgun array indicate the received levels are dependent on water depth. Since the majority of the planned airgun operations will be conducted in waters 100 to 1,000 m deep, the buffer zone of 1,005 m used for the two 105 in^3 GI airguns was used to be more conservative. The expected sighting data for pinnipeds accounts for both pinnipeds that may be in the water and those hauled-out on ice surfaces. While the number of cetaceans that may be encountered within the ice margin habitat will be expected to be less than open water, the estimates utilized expected sightings for the open water and represent conservative estimates. It is unlikely that a particular animal will stay in the area during the entire survey.

The number of different individuals potentially exposed to received levels greater than or equal to 160 dB re 1 μPa (rms) from seismic airgun operations and 120 dB re 1 μPa (rms) for icebreaking activities was calculated by multiplying:

(1) The expected species density (in number/km^2), and

(2) The anticipated area to be ensonified to that level during airgun operations.

Applying the approach described above, approximately 5,628 km^2 (including the 25% contingency) will be ensonified within the 160 dB isopleth for seismic airgun operations and approximately 21,540 km^2 will be ensonified within the 120 dB isopleth for icebreaking activities on one or more occasions during the survey. The take calculations within the study sites do not explicitly add animals to account for the fact that new animals (i.e., turnover) are not accounted for in the initial density snapshot and animals could also approach and enter the area ensonified above 160 dB for seismic airgun operations and 120 dB for icebreaking activities; however, studies suggest that many marine mammals will avoid exposing themselves to sounds at this level, which suggests that there will not necessarily be a large number of new animals entering the area once the seismic survey and icebreaking activities started. Because this approach for calculating take estimates does not allow for turnover in the marine mammal populations in the area during the course of the survey, the actual number of individuals exposed may be underestimated, although the conservative (i.e., probably overestimated) line-kilometer distances used to calculate the area may offset this. Also, the approach assumes that no cetaceans or pinnipeds will move away or toward the tracklines as the *Palmer* approaches in response to increasing sound levels before the levels reach 160 dB for seismic airgun operations and 120 dB for icebreaking activities. Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in absence of a seismic airgun and icebreaking program) to occur in the waters that will be exposed to greater than or equal to 160 dB (rms) for seismic airgun operations and greater than or equal to 120 dB (rms) for icebreaking activities.

NSF and ASC's estimates of exposures to various sound levels assume that the planned surveys will be carried out in full; however, the ensonified areas calculated using the planned number of line-kilometers has been increased by 25% to accommodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The estimates of the numbers of marine mammals potentially exposed to 120 dB (rms) and 160 dB (rms) received levels are precautionary and probably overestimate the actual numbers of marine mammals that could be involved. These estimates assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

Table 5 shows the estimates of the number of different individual marine mammals anticipated to be exposed to greater than or equal to 120 dB re 1 μPa (rms) for icebreaking activities and greater than or equal to 160 dB re 1 μPa (rms) for seismic airgun operations during the seismic survey if no animals moved away from the survey vessel. The total take authorized is given in the far right column of Table 5.

Encouraging and Coordinating Research

NSF and ASC will coordinate the planned marine mammal monitoring program associated with the low-energy seismic survey with other parties that express interest in this activity and area. NSF and ASC will coordinate with applicable U.S. agencies (e.g., NMFS), and will comply with their requirements. NSF has already reached out to the Australian Antarctic Division (AAD), who are the proponents of the proposed marine protected area and regularly conduct research expeditions in the marine environment off East Antarctica.

The planned action will complement fieldwork studying other Antarctic ice shelves, oceanographic studies, and ongoing development of ice sheet and other ocean models. It would facilitate learning at sea and ashore by students, help to fill important spatial and temporal gaps in a lightly sampled region of coastal Antarctica, provide additional data on marine mammals present in the East Antarctic study areas, and communicate its findings via reports, publications and public outreach.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (in the Dumont d'Urville Sea off the coast of East Antarctica) that implicate MMPA section 101(a)(5)(D).

Analysis and Determinations

Negligible Impact

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts

when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document, in the notice of the proposed IHA (79 FR 464, January 3, 2014) and based on the following factors, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death. The factors include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; and

(2) The potential for temporary or permanent hearing impairment is relatively low and will likely be avoided through the implementation of the shut-down measures.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the NSF and ASC's planned low-energy marine seismic survey, and none are authorized by NMFS. Table 5 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given the requirement to implement mitigation, monitoring, and reporting measures to minimize impacts to marine mammals. Additionally, the seismic survey will not adversely impact marine mammal habitat.

For the marine mammal species that may occur within the action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Additionally, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

Of the 14 marine mammal species under NMFS jurisdiction that may or are known to likely to occur in the study area, five are listed as threatened or endangered under the ESA: Southern right, humpback, sei, fin, blue, and sperm whales. These species are also considered depleted under the MMPA. Of these ESA-listed species, incidental take has been requested to be authorized for humpback, sei, fin, blue, and sperm whales. There is generally insufficient data to determine population trends for the other depleted species in the study area. To protect these animals (and other marine mammals in the study area), NSF and ASC must cease or reduce airgun operations if any marine mammal enters designated zones. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, and the activity is not expected to impact rates of recruitment or survival.

As mentioned previously, NMFS estimates that 14 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 4 of this document.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels and the 120 dB re 1 μPa (rms) received level threshold for icebreaking activities to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]).

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, the impact of conducting a low-energy marine seismic survey in the Dumont d'Urville Sea off the coast of East Antarctica, January to March 2014, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the research activities, have led NMFS to determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the length of the seismic survey, the requirement to implement mitigation measures (e.g., shut-down of seismic operations), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that it will have a negligible impact on the species or stocks in the action area.

Small Numbers

The estimate of the number of individual cetaceans and pinnipeds that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) and sounds from icebreaking activities with received levels greater than or equal to 120 dB re 1 μPa (rms) during the survey is (with 25% contingency) in Table 5 of this document. That total (with 25% contingency) includes 2,798 humpback, 1,598 Antarctic minke, 47 sei, 2,727 fin, 24 blue, and 376 sperm whales could be taken by Level B harassment during the seismic survey, which will represent 8, 0.53, 0.06, 1.9, 1.4, and 3.9% of the worldwide or regional populations, respectively. Some of the cetaceans potentially taken by Level B harassment are delphinids and porpoises: Killer whales, long-finned pilot whales, hourglass dolphins, and spectacled porpoises are estimated to be the most common delphinid and porpoise species in the area, with estimates of 729, 282, 305, and 308, which will represent 2.9, 0.1, and 0.2% (spectacled porpoise population is not available) of the affected worldwide or regional populations, respectively. Most of the pinnipeds potentially taken by Level B harassment are: Crabeater, leopard, Ross, and Weddell seals with estimates of 23,582, 1,399, 3,456, and 2,053, which will represent 0.5, 0.6, 2.7, and 0.4% of the affected worldwide or regional populations, respectively.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a low-energy marine seismic survey in the Dumont d'Urville Sea off the coast of East Antarctica, January to March 2014, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B

harassment) of small numbers of certain species of marine mammals. The requested take estimates represent small numbers relative to the affected species or stock sizes (i.e., all are less than or equal to 8%). See Table 5 for the requested authorized take numbers of marine mammals.

Endangered Species Act

Of the species of marine mammals that may occur in the survey area, several are listed as endangered under the ESA, including the humpback, sei, fin, blue, and sperm whales. NSF and ASC did not request take of endangered Southern right whales due to the low likelihood of encountering this species during the cruise. Under section 7 of the ESA, NSF, on behalf of ASC and five other research institutions, initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this low-energy seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, also initiated formal consultation under section 7 of the ESA with the Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA under section 101(a)(5)(D) of the MMPA on threatened and endangered marine mammals. These two consultations were consolidated and addressed in a single Biological Opinion addressing the effects of these actions. NMFS's Biological Opinion concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of listed species and included an Incidental Take Statement incorporating the requirements of the IHA as Terms and Conditions. The Biological Opinion also concluded that designated critical habitat of these species does not occur in the action area.

National Environmental Policy Act

NSF and ASC provided NMFS a ''Initial Environmental Evaluation/Environmental Assessment to Conduct Marine-Based Studies of the Totten Glacier System and Marine Record of Cryosphere—Ocean Dynamics,'' (IEE/EA) prepared by AECOM on behalf of NSF and ASC. The IEE/EA analyzes the direct, indirect, and cumulative environmental impacts of the planned specified activities on marine mammals including those listed as threatened or endangered under the ESA. NMFS, after review and evaluation of the NSF and ASC IEE/EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 126–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, prepared an independent Environmental Assessment (EA) titled ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the National Science Foundation and Antarctic Support Contract to Take Marine Mammals by Harassment Incidental to a Low-Energy Marine Geophysical Survey in the Dumont d'Urville Sea off the Coast of East Antarctica, January to March 2014.'' NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and issued a Finding of No Significant Impact (FONSI).

Authorization

NMFS has issued an IHA to NSF and ASC for the take, by Level B harassment, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey in the Dumont d'Urville Sea off the coast of East Antarctica, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 4, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–05396 Filed 3–12–14; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. 2011–0014]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Consumer Product Safety Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of a federal government-wide effort to streamline the process to seek feedback from the public on service delivery, the Consumer Product Safety Commission (Commission or CPSC) announces that CPSC intends to submit a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.). OMB previously approved the collection of information under control number 3041–0148. OMB's most recent extension of approval will expire on April 30, 2014. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than May 12, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0014, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Burden Hours

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner to improve service delivery. Below we provide the CPSC's projected average estimates of qualitative surveys, focus groups, customer satisfaction surveys, and usability tests for the next three years.

Current Actions: Renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals and households, businesses and organizations, state, local, or tribal government.

Average Expected Annual Number of Activities: Eight activities, including qualitative surveys, focus groups, customer satisfaction surveys, and usability tests.

Annual Number of Respondents: 1,600.

Annual responses: 1,600.

Frequency of Response: Once per request.

Average minutes per response: 45 minutes per response.

Annual Burden hours: 1,200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection of information displays a currently valid OMB control number.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other forms of information technology.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–05481 Filed 3–12–14; 8:45 am]

BILLING CODE 6355–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY

Report of a New Record System Under the Privacy Act of 1974

AGENCY: Court Services and Offender Supervision Agency (CSOSA).

ACTION: Notice.

SUMMARY: CSOSA is proposing a new system of records, which will provide for the collection of information to track, verify, update, develop the skills of CSOSA employees, and to establish and maintain an electronic system to facilitate the management of CSOSA's workforce to assist the agency with closing skills gaps, succession management, workforce planning, and training and development efforts.

SUPPLEMENTARY INFORMATION:

1. Narrative statement. CSOSA proposes to establish a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system will provide for the collection of information to track, verify, update, and develop the skills of CSOSA employees. The system information will be accessed and used by the employees themselves, their supervisors, training centers, and designated analysts and managers.

a. System name. CSOSA Competency Assessment Tool

b. System Purpose. To establish and maintain an electronic system to facilitate the management of CSOSA's workforce to assist the agency with closing skills gaps, succession management, workforce planning, and training and development efforts.

c. Authority. 5 U.S.C. 1103(c)(2)(A) and (B); 5 U.S.C. 1402(a)(6); 5 U.S.C. 4117.

d. Effect of system on individual privacy. The system will provide management and the employees the means for managing their career development with the agency. Information will be safeguarded according to established privacy rules and regulations.

e. Safeguards against unauthorized access. Records will be safeguarded in accordance with the Privacy Act requirements. Access will be limited to authorized individuals with passwords, and the database will be maintained behind an agency firewall software program and a GSA certified vendor internet service provider's security and firewall program.

2. Changes to existing agency rules. None.

3. Supporting documentation. A notice of the proposed system of records is attached.

Court Services and Offender Supervision Agency Proposed New Record System Under the Privacy Act of 1974

SYSTEM NAME:

CSOSA Competency Assessment Tool.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Office of Human Resources, 655 15th St. NW., Suite 800, Washington, DC 20005. Records pertaining to core competency assessments of designated staff are located on CSOSA's servers and/or those of an authorized vendor. Records pertaining to pre-determined core competencies (e.g., leadership) may be forwarded to authorized/designated staff within CSOSA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CSOSA's current and former employees, and authorized vendors whom have accessed or completed the CSOSA Competency Assessment Tool.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain personal information and supervisor assessments and an employee's own self-assessments of staff leadership skills and other core competencies according to established proficiency scales similar to or the Likert Scale. The assessments are tied to a master account that contains demographic data to help determine participation.

The personal demographic information in the system may include but are not limited to the following:

a. Employee's CSOSA email address.
b. First and last name.
c. Office/Branch/Unit to which the employee is assigned.
d. Pay plan.
e. Grade.
f. Occupational series/family.
g. Occupational Specialty
h. Work role, if applicable (e.g., manager, supervisor, team lead).
i. Work telephone.
j. Estimated years until retirement.
k. Tenure in current position.
l. Tenure with CSOSA.

Self-assessment information includes the employee's determination of his/her proficiency level against a set of leadership skills and other competencies using an established proficiency scale like the Likert scale. The assessment by the supervisor includes the supervisor's determination of an employee's proficiency level and the desired proficiency level of the targeted positions using the same set of competencies and proficiency scales.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

5 U.S.C. 1103(c)(2)(A) and (B), 5 U.S.C. 1402(a)(6), 5 U.S.C. 4117.

Additional authorities include:

Executive Order 9830—Amending the Civil Service Rules and providing for Federal personnel administration Feb. 24, 1947.

Executive Order 13197—Government-wide Accountability for Merit System Principles; Workforce Information January 18, 2001.

PURPOSE:

The purpose of the new electronic system is to establish, maintain and help to facilitate the career management of CSOSA employees. The CSOSA Competency Assessment Tool is an online and/or computer-based instrument for assessing the proficiency levels of CSOSA employees in key competencies. The computer tool allows an employee to conduct a competency self-assessment and supervisors to assess the competencies of their employees to determine competency strengths and areas for improvement. CSOSA can use the results of the assessments to support its skills gap analyses, succession management, workforce planning, and training and development efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and information in these records may be disclosed as a routine use:

1. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when CSOSA becomes aware of a violation or potential violation of a civil or criminal law or regulation.

2. To a Member of Congress or his or her staff on behalf of and at the request of the individuals who is the subject of the record.

3. To another Federal agency or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding, and such information is the subject of a court order directing disclosure or deemed by CSOSA to be relevant and necessary to the litigation.

4. By the National Archives and Records Administration in records management and inspections.

5. To provide an authorized CSOSA official or staff member information needed in the performance of official duties related to reconciling or reconstructing data files, compiling description statistics, and making analytical studies to support the function for which the records were collected and maintained.

6. By CSOSA, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

7. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which CSOSA is authorized to appear, when:

a. CSOSA, or any component thereof; or

b. Any employee of CSOSA in his or her official capacity; or

c. Any employee of CSOSA in his or her individual capacity where the Department of Justice or CSOSA has agreed to represent the employee; or

d. The United States, when CSOSA determines that litigation is likely to affect CSOSA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or CSOSA is deemed by CSOSA to be relevant and necessary to the litigation.

8. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

9. To disclose information to the U.S. Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

10. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices of matters before the Federal Service Impasses Panel.

11. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB circular No. A–19.

12. To provide authorized CSOSA officials, vendors or staff members information needed in the performance of official duties related to succession planning, workforce analysis, skills gap closure, training and development, or recruitment and retention.

13. To provide individual users the ability to view self-entered data on individual competency proficiency levels.

14. To provide reports to authorized CSOSA officials and staff on aggregate level data of proficiency levels in identified competencies across the Agency.

15. To provide specific raw data reports to authorized CSOSA officials and staff on individual-level data related to proficiency levels in identified competencies.

16. To disclose aggregate level data from the CSOSA Competency Assessment Tool via an agency-wide report.

17. To authorized contractors, vendors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for CSOSA or the Federal government that is in the performance of a Federal duty to which the information is deemed relevant.

18. To disclose to a requesting Federal agency, information in connection with the hiring, retention, separation, or retirement of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; the classification of a job; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that CSOSA determines that the information is relevant and necessary to the requesting party's decision on the matter.

19. To an appeal, grievance, hearing, or complaints examiner; an equal opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in an electronic relational database management system hosted on CSOSA's electronic network servers and/or through Survey Monkey, a GSA approved vendor's Internet server, accessed via a password-restricted system. Duplicate records also exist on magnetic backup tapes maintained by agency servers or on Survey Monkey.

RETRIEVABILITY:

Authorized CSOSA personnel can retrieve system records by using the employee's name and employee identification number. Authorized personnel can aggregate the results of individual and supervisor assessments and create reports, without specifically identifying individuals. Authorized personnel can also retrieve system records that produce raw data reports that will contain the identity of individuals. An employee can retrieve their own information and individual reports (which contain a record of how the individuals assessed themselves, along with how the supervisor assessed the position) using their name and employee identification number. All system records are accessed through the agency's computer network and/or a GSA approved Internet service provider through a password-restricted system.

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. The database will be maintained behind a firewall maintained by Survey Monkey, a GSA certified internet server provider, and the agency's own firewall software programs.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to CSOSA's records maintenance and disposition schedules and the requirements of the National Archives and Records Administration. Any attempts to complete and completed competency assessments are archived to a computerized storage disk nightly and retained on the agency's backup computer network server for five years. When records are purged from the agency's computer server, the records are transferred to a Compact Disc (CD) or other electronic media. Records in electronic media are electronically erased. CD or other electronic media are maintained for five years.

SYSTEM MANAGER AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency (CSOSA), 655 15th St. NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager or designee. Individuals must furnish the following information for their records to be located and identified:

a. Name (current and/or former).

b. Name of Office/Branch/Unit in which currently and/or formerly employed in CSOSA.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name (current and/or former).

b. Name of Office/Branch/Unit in which currently and/or formerly employed in CSOSA.

Individuals requesting access must also follow CSOSA's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name (current and/or former).

b. Name of Office/Branch/Unit in which currently and/or formerly employed in CSOSA.

Individuals requesting amendment of their records must also follow CSOSA's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. The supervisor of the individual to whom the information pertains.

c. CSOSA's Office of Human Resources.

Dated: February 21, 2014.

Diane Bradley,

Assistant General Counsel, Court Services and Offender Supervision Agency.

[FR Doc. 2014–05659 Filed 3–11–14; 4:15 pm]

BILLING CODE 3129–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0032]

Proposed Collection; Comment Request

AGENCY: Defense Threat Reduction Agency (DTRA), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Threat Reduction Agency (DTRA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 12, 2014.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this

same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Threat Reduction Agency, Attn: NTPR, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201, or call (703) 767–3175.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Nuclear Test Personnel Review Forms; DTRA Form 150, ''Information Request and Release'' and DTRA Forms 150–A, –B, –C, ''Nuclear Test Questionnaires,'' OMB Control Number 0704–0447.

Needs and Uses: The information collection requirement is necessary to collect irradiation scenario information from nuclear test participants to perform their radiation dose assessment. The DTRA radiation dose assessments are provided to the Department of Veterans Affairs in support of veteran radiogenic disease compensation claims. This information may also be used in approved veteran epidemiology studies that study the health impact of nuclear tests on U.S. veterans.

Affected Public: Veterans and civilian test participants, and their representatives who are filing radiogenic disease compensation claims with the Department of Veterans Affairs or Department of Justice and require information from the Department of Defense.

Annual Burden Hours: 463.

Number of Respondents: 370.

Responses per Respondent: 1.

Average Burden per Response: 75 minutes.

Frequency: On occasion.

Veterans and their representatives routinely contact DTRA (by phone and mail) to request information regarding participation in U.S. atmospheric nuclear testing. A release form is required to certify the identity of the requester and authorize the release of Privacy Act information (to the veteran or a 3rd party). DTRA is also required to collect irradiation scenario information from nuclear test participants to accurately determine their radiation dose assessment.

Dated: March 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–05464 Filed 3–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0035]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice, T7335, entitled ''Defense Civilian Pay System (DCPS)'' in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. This system is used to accurately compute individual employee's pay entitlements, withhold required and authorized deductions and issue payments for amounts due.

DATES: Comments will be accepted on or before April 14, 2014. This proposed action will be effective on 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: Mr. Gregory Outlaw, (317) 510–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

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: March 7, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7335

SYSTEM NAME:

Defense Civilian Pay System (DCPS) (December 12, 2008, 73 FR 75683).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Finance and Accounting Service, Civilian Pay Payroll Office, 8899 E. 56th St., Indianapolis, IN 46249–0002.

Defense Finance and Accounting Service, Civilian Pay Payroll Office, 1240 E 9th St., Cleveland, OH 44199–2055.

Defense Information Systems Agency, Defense Enterprise Computing Center (DISA/DECC), 5450 Carlisle Pike, Building 309, Mechanicsburg, PA 17055–0975.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in the performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is limited to CAC enabled users and restricted by passwords, which are changed according to agency security policy.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records may be temporary in nature and destroyed when actions are completed, they are superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year and destroyed up to 6 years after cutoff or cutoff at the end of the payroll year and then sent to the

National Personnel Records Center after 3 payroll years where they are retained for 56 years. Individual retirement records are cut off upon separation, transfer, retirement or death, and forwarded to the Office of Personnel Management.''

SYSTEM MANAGER AND ADDRESS:

Delete entry and replace with ''Program Manager, Defense Finance and Accounting Service, ATTN: DFAS–ZTB, 8899 East 56th Street, Indianapolis, IN 46249–0150.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address for reply, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address for reply, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

[FR Doc. 2014–05441 Filed 3–12–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–64–000.

Applicants: J.P. Morgan Ventures Energy Corporation, Panda-Brandywine, L.P.

Description: Application for Approval Pursuant to Section 203 of the Federal Power Act of J.P. Morgan Ventures Energy Corporation and Panda-Brandywine, L.P.

Filed Date: 3/5/14.

Accession Number: 20140305–5202.

Comments Due: 5 p.m. ET 3/26/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–21–012; ER12–21–013.

Applicants: Nevada Power Company, Sierra Pacific Power Company, PacifiCorp, Agua Caliente Solar, LLC, Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar Farms LLC, CalEnergy, LLC, CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates.

Description: Supplement to December 31, 2013 and January 2, 2014 Notice(s) of Non-Material Change in Status of the NRG MBR Entity [Agua Caliente Solar, LLC].

Filed Date: 3/5/14.

Accession Number: 20140305–5201.

Comments Due: 5 p.m. ET 3/26/14.

Docket Numbers: ER14–1195–000.

Applicants: Provider Power CT, LLC.

Description: Supplement to January 29, 2014 Provider Power CT, LLC tariff filing.

Filed Date: 3/6/14.

Accession Number: 20140306–5088.

Comments Due: 5 p.m. ET 3/17/14.

Docket Numbers: ER14–1434–000.

Applicants: Southern California Edison Company.

Description: SGIA & Distribution Service Agreement with Victor Dry Farm Ranch B LLC to be effective 3/7/2014.

Filed Date: 3/6/14.

Accession Number: 20140306–5011.

Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1435–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to OA Schedule 12/RAA Schedule 17 to remove CCES & People's Power to be effective 12/31/9998.

Filed Date: 3/6/14.

Accession Number: 20140306–5061.

Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1436–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3769; Queue Nos. X2–025 & X4–019 to be effective 2/4/2014.

Filed Date: 3/6/14.

Accession Number: 20140306–5115.

Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER14–1437–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position Y1–033; Original Service Agreement No. 3771 to be effective 2/4/2014.

Filed Date: 3/6/14.

Accession Number: 20140306–5121.

Comments Due: 5 p.m. ET 3/27/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 6, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05520 Filed 3–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–63–000.

Applicants: Macho Springs Solar, LLC, Southern Turner Renewable Energy, LLC.

Description: Joint Application for Expedited Approval under Section 203 of the Federal Power Act and Request for Confidential Treatment and Waivers of Macho Springs Sola, LLC, et. al.

Filed Date: 3/4/14.

Accession Number: 20140304–5201.

Comments Due: 5 p.m. ET 3/25/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2474–007.

Applicants: Sierra Pacific Power Company.

Description: Order No. 784 Compliance & Amendments to MBR Tariff, Volume No. 7 to be effective 2/3/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5116.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER10–2475–007.

Applicants: Nevada Power Company.

Description: Order No. 784 Compliance & Amendments to MBR Tariff, Volume No. 11 to be effective 2/3/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5117.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1417–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 3128; Queue No. W3–139 to be effective 4/13/2012.

Filed Date: 3/4/14.

Accession Number: 20140304–5082.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1418–000.

Applicants: Southwest Power Pool, Inc.

Description: 2236R3 Golden Spread Electric Cooperative, Inc. NITSA to be effective 2/1/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5085.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1419–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: WDS Tariff Amendment RY 1 to be effective 3/1/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5099.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1420–000.

Applicants: Sierra Pacific Power Company.

Description: Rate Schedule No. 57 Amendments to Cost-based Rate Tariff to be effective 2/3/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5118.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1421–000.

Applicants: Diamond State Generation Partners, LLC.

Description: Reactive Supply Service Tariff to be effective 5/1/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5120.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1422–000.

Applicants: RockTenn CP, LLC.

Description: Application and Initial Baseline Tariff Filing to be effective 3/4/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5122.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1423–000.

Applicants: Southwest Power Pool, Inc.

Description: 1148R17 American Electric Power NITSA and NOA to be effective 2/1/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5143.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1424–000.

Applicants: California Independent System Operator Corporation.

Description: 2014–03–04_AltaWindCertificatesOfConcurrence to be effective 4/9/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5180.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1425–000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: Transmission Rates Filing to be effective 5/3/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5181.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1426–000.

Applicants: Otter Tail Power Company.

Description: Submission of Revised Transmission Capacity Exchange Agreement to be effective 5/3/2014.

Filed Date: 3/4/14.

Accession Number: 20140304–5183.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: ER14–1427–000.

Applicants: American Electric Power Service Corporation, Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Oklahoma Transmission Company, Inc., AEP Southwestern Transmission Company, Inc.

Description: Section 205 filing to update depreciation rates of American Electric Power Service Corporation on behalf of affiliates.

Filed Date: 3/4/14.

Accession Number: 20140304–5199.

Comments Due: 5 p.m. ET 3/25/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 5, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05517 Filed 3–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–42–000.

Applicants: Fowler Ridge IV Wind Farm LLC.

Description: Supplement to January 15, 2014 Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Fowler Ridge IV Wind Farm LLC.

Filed Date: 3/5/14.

Accession Number: 20140305–5058.

Comments Due: 5 p.m. ET 3/17/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1782–005.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits Annual Compliance Report Regarding Operational Penalties for 2013.

Filed Date: 3/3/14.

Accession Number: 20140303–5109.

Comments Due: 5 p.m. ET 3/24/14.

Docket Numbers: ER10–3301–003; ER10–2757–003; ER10–2756–003.

Applicants: Arlington Valley, LLC, Griffith Energy LLC, GWF Energy LLC.

Description: Supplement to January 22, 2014 Notice of Change in Status of the Star West Companies.
Filed Date: 3/5/14.
Accession Number: 20140305–5061.
Comments Due: 5 p.m. ET 3/26/14.
Docket Numbers: ER13–281–002.
Applicants: Star Energy Partners LLC.
Description: Notice of Non-Material Change in Status of Star Energy Partners LLC.
Filed Date: 3/4/14.
Accession Number: 20140304–5211.
Comments Due: 5 p.m. ET 3/25/14.
Docket Numbers: ER14–1428–000.
Applicants: NRG Power Marketing LLC, GenOn Energy Management, LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Energy Center LLC, NRG Delta LLC, El Segundo Power, LLC, Dynegy Moss Landing, LLC, CalPeak Power—Panoche LLC, CalPeak Power—Enterprise LLC, CalPeak Power LLC, NRG California South LP, CalPeak Power—Vaca Dixon LLC, Dynegy Marketing and Trade, LLC, CalPeak Power—El Cajon LLC, SHELL ENERGY NORTH AMERICA (US), LP, La Paloma Generating Company, LLC, High Plains Ranch II, LLC, Long Beach Generation LLC.
Description: Emergency Request for Temporary Waiver of the CAISO Operating Agreement and Shortened Comment Period of the Indicated CAISO Suppliers.
Filed Date: 3/4/14.
Accession Number: 20140304–5203.
Comments Due: 5 p.m. ET 3/11/14.
Docket Numbers: ER14–1429–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Normal Alba IFA to be effective 2/28/2014.
Filed Date: 3/5/14.
Accession Number: 20140305–5041.
Comments Due: 5 p.m. ET 3/26/14.
Docket Numbers: ER14–1430–000.
Applicants: Xcel Energy Services Inc.
Description: Notice of Cancellation of Commitment and Dispatch Service Agreement, et. al., filed by Xcel Energy Services Inc., on behalf of Southwestern Public Service Company.
Filed Date: 3/5/14.
Accession Number: 20140305–5105.
Comments Due: 5 p.m. ET 3/26/14.
Docket Numbers: ER14–1431–000.
Applicants: ITC Midwest LLC.
Description: Filing of Joint Use Pole Agreement with State Center to be effective 5/5/2014.
Filed Date: 3/5/14.
Accession Number: 20140305–5119.
Comments Due: 5 p.m. ET 3/26/14.
Docket Numbers: ER14–1432–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue W2–061—Svc Agmnt No. 3748 & Cancellation of Service Agrmnt No. 2932 to be effective 2/4/2014.
Filed Date: 3/5/14.
Accession Number: 20140305–5125.
Comments Due: 5 p.m. ET 3/26/14.
Docket Numbers: ER14–1433–000.
Applicants: Century Aluminum Sebree LLC.
Description: Petition of Century Aluminum Sebree LLC for Limited Waiver.
Filed Date: 3/5/14.
Accession Number: 20140305–5155.
Comments Due: 5 p.m. ET 3/26/14.
Docket Numbers: ER14–689–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–03–05_Entergy IAs Succession Amendment Filing to be effective 12/19/2013.
Filed Date: 3/5/14.
Accession Number: 20140305–5164.
Comments Due: 5 p.m. ET 3/26/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 5, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05519 Filed 3–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1390–000]

Lake Benton Power Partners LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lake Benton Power Partners LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05521 Filed 3–12–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1397–000]

Storm Lake Power Partners II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Storm Lake Power Partners II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 27, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 7, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–05522 Filed 3–12–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–89–OA]

Notification of Public Teleconferences of the Clean Air Scientific Advisory Committee Air Monitoring and Methods Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces three public teleconferences of the Clean Air Scientific Advisory Committee (CASAC) Air Monitoring and Methods Subcommittee (AMMS) to conduct a review of the scientific and technical aspects of a draft document that supports a recommendation to adopt the Nitric Oxide (NO)-Chemiluminescence method as a second Federal Reference Method (FRM) for measuring Ozone.

DATES: The three CASAC AMMS public teleconferences will be held on Thursday, April 3, 2014; Tuesday, April 8, 2014; and, Thursday, June 12, 2014, with all three occurring from 11:30 a.m. to 4:30 p.m. (Eastern Time).

ADDRESSES: The three CASAC AMMS public teleconferences will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the CASAC AMMS public teleconferences may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voicemail at (202) 564–2134, fax at (202) 565–2098; or email at *hanlon.edward@epa.gov*. General information concerning the CASAC can 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. 7409D(d)(2), to 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 the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The CASAC AMMS and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. The CASAC AMMS will provide advice to the Administrator through the chartered CASAC. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC AMMS will hold three public teleconferences to discuss and deliberate on the topic below.

Background

The EPA is developing scientific and technical documents associated with the Ozone (O_3) National Ambient Air Quality Standard (NAAQS). The O_3 NAAQS FRM serves as the standard protocol for measuring ambient O_3 concentration values. The O_3 NAAQS FRM is used to assess whether a given geographic region is in full regulatory compliance with the appropriate O_3 NAAQS standard. The O_3 NAAQS FRM is also used to help assess the operational and laboratory-based performance of emerging monitoring technologies. The current O_3 NAAQS FRM (Ethylene-Chemiluminescence method) is no longer being manufactured, and the EPA's Office of Research and Development (ORD) is proposing addition of the Nitric Oxide (NO)-Chemiluminescence method as a second FRM for O_3. During the April 3, 2014 teleconference call, the CASAC AMMS will review the scientific and technical aspects of a draft document that supports ORD's recommendation to adopt the NO-Chemiluminescence method as a second FRM for measuring O_3. The April 8, 2014 AAMS teleconference will only be held if the subcommittee does not complete its deliberations on the topic being considered during the April 3, 2014 public teleconference.

Technical Contacts: Any technical questions concerning EPA's proposal to add the NO-Chemiluminescence method as a second FRM for O_3 should be directed to Mr. Eric S. Hall, National Exposure Research Laboratory, Office of Research and Development, U.S. EPA, 109 T.W. Alexander Drive, MD E205–03, Research Triangle Park, NC 27711–0001, telephone (919) 541–3147 or via email at *hall.erics@epa.gov*.

Availability of Meeting Materials: Prior to the meeting, the review document, 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. The intended use of comments submitted to a federal advisory committee is different from the purpose of comments submitted to the EPA's program offices. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public may submit relevant comments pertaining to the group conducting the review to the SAB Staff Office or provide relevant comments pertaining to the topics being considered including the charge to the CASAC Subcommittee to consider as it develops advice for EPA. Input from the public to the CASAC Subcommittee will have the most impact if it provides specific scientific or technical information or analysis for the CASAC Subcommittee 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 will be limited to three minutes for the public teleconferences. 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. Edward Hanlon, DFO, in writing (preferably via email) at the contact information noted above by April 2, 2014, to be placed on the list of public speakers for the April 3, 2014 public teleconference, and by June 5, 2014, to be placed on the list of public speakers for the June 12, 2014 public teleconference.

Written Statements: Written statements should be supplied to Mr. Hanlon, DFO, via email at the contact information noted above by April 2, 2014 for the April 3, 2014 public teleconference, and by June 5, 2014 for the June 12, 2014 public teleconference so that the information may be made available to the AMMS 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. Edward Hanlon at (202) 564–2134 or *hanlon.edward@epa.gov*. To request accommodation of a disability, please contact Mr. Hanlon preferably at least ten days prior to the public meeting and/or teleconference to give EPA as much time as possible to process your request.

Dated: March 5, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–05524 Filed 3–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–90–OA]

Notification of a Public Teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) and the CASAC Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered CASAC and the CASAC Ozone Review Panel to review and finalize CASAC draft letters on three EPA documents: (1) *Health Risk and Exposure Assessment for Ozone—Second External Review Draft (January 2014); (2) Welfare Risk and Exposure Assessment for Ozone—Second External Review Draft (January 2014);* and (3) *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards—Second External Review Draft (January 2014).*

DATES: The CASAC teleconference will be held on Wednesday, May 28, 2014 from 9:00 a.m. to 12:00 p.m. (Eastern Time).

Location: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone at (202) 564–2073 or email at *stallworth.holly@epa.gov*. General information concerning the CASAC can 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 ozone. EPA's draft documents for CASAC review were prepared as part of the agency's review of the National Ambient Air Quality Standards (NAAQS) for ozone.

Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC augmented with additional experts, known as the CASAC Ozone Review Panel, will hold a public teleconference to review and finalize its letters on the three EPA documents cited above. The CASAC and the CASAC Ozone Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

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 ozone. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for ozone. The CASAC reviewed the first drafts of the EPA's *Health Risk and Exposure Assessment for Ozone (First External Review Draft—Updated August 2012)* and *Welfare Risk and Exposure Assessment for Ozone (First External*

Review Draft—Updated August 2012). CASAC's comments on both of these documents are reported in a letter to the EPA Administrator, dated November 19, 2012 (EPA–CASAC–13–002). CASAC also reviewed the first draft of the EPA's *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (First External Review Draft—August 2012)* as reported in a letter to the EPA Administrator, dated November 26, 2012 (EPA–CASAC–13–003).

Technical Contacts: Any technical questions concerning the *Health Risk and Exposure Assessment for Ozone—Second External Review Draft (January 2014)* or concerning the *Welfare Risk and Exposure Assessment for Ozone—Second External Review Draft (January 2014)* should be directed to Dr. Bryan Hubbell (*hubbell.bryan@epa.gov*). Any questions concerning the *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards—Second External Review Draft (January 2014)* should be directed to Ms. Susan Lyon Stone (*stone.susan@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the draft letters, 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 relevant comments for a federal advisory committee to consider pertaining to EPA's charge to the committee or review materials. Input from the public to the CASAC will have the most impact if it provides specific scientific, technical information or analysis or if it relates to the clarity or accuracy of the technical information for the CASAC's consideration. 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 three minutes. Interested parties should contact Dr. Stallworth, DFO, in writing (preferably via email) at the contact information noted above by May 19, 2014 to be placed on the list of public speakers for the teleconference. *Written Statements:* Written statements should be submitted to the DFO via email at the contact information noted above by May 19, 2014 for the teleconference so that the information may be made available to the CASAC Panel 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 public 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 Dr. Holly Stallworth at (202) 564–2073 or *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: March 5, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–05530 Filed 3–12–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–9905–37]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a November 20, 2013 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the November 20, 2013 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. However, the Agency did receive notice via letter dated December 18, 2013 from the registrant Nufarm Americas Inc. to withdraw their voluntary cancellation request for products EPA Reg. Nos. 33688–2 (Nufarm S.A. Technical Butralin) and EPA Reg. No. 33688–4 (Tamex 3EC). Accordingly, EPA hereby issues in this notice a cancellation order granting the requested withdrawals and cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions. In addition, for pertinent information relating to the pesticide registrations for ME030004 and ME980001 as published in the November 20, 2013 notice, see Unit II. of this notice.

DATES: The cancellations are effective March 13, 2014.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; email address: *pates.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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–OPP–2009–1017, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the

Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

The Agency also received notice via letter dated December 18, 2013 from the registrant Nufarm Americas Inc. to withdraw their voluntary cancellation request for products EPA Reg. No. 33688–2 (Nufarm S.A. Technical Butralin) and EPA Reg. No. 33688–4 (Tamex 3EC). Thus, these registrations have been removed from this cancellation order notice. In addition, pesticide registration numbers ME030004 and ME980001 and its contents have been removed from the listing in Table 1. EPA inadvertently listed the pesticide product names Glypro and RH–5992 2F Experimental Insecticide for pesticide registration numbers ME030004 and ME980001, respectively, in the **Federal Register** of November 20, 2013 (78 FR 69666) (FRL 9902–40). Therefore, this action excludes pesticide registration numbers ME030004 and ME980001 from cancellation at this time. EPA will reissue pesticide product numbers ME030004 and ME980001 for voluntary cancellation in a future **Federal Register** notice.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
000264–00619	Desmedipham Technical	Desmedipham.
000264–00620	Betanex Herbicide	Desmedipham.
000264–00621	Betamix Herbicide	Phenmedipham, Desmedipham.
000264–00632	Betamix Progress	Phenmedipham, Desmedipham, Ethofumesate.
000264–00640	TPTH Technical	Fentin hydroxide.
000264–00780	Fenhexamid 50 WDG	Fenhexamid.
000264–00785	Fenhexamid Technical	Fenhexamid.
000264–00851	Betanal Forte	Phenmedipham, Desmedipham.
000264–00853	Betanal Compact	Desmedipham.
000264–00854	Betanal Power Herbicide	Phenmedipham, Desmedipham, Ethofumesate.
000270–00348	Adams Caniderm Mist	MGK 264, Piperonyl Butoxide, Pyrethrins (NO INERT USE).
000432–01378	Imidacloprid 0.72% + Cyfluthrin 0.72% Concentrate Insecticide.	Imidacloprid, Cyfluthrin.
002724–00467	Sandoz 9412 Mousse (Light)	Piperonyl Butoxide, S-Methoprene, Pyrethrins (NO INERT USE).
004787–00054	Cheminova Nicosulfuron Technical	Nicosulfuron.
005481–00211	PCNB 10% Granules Soil Fungicide	Pentachloronitrobenzene.
005481–00212	PCNB 2–E Liquid Emulsifiable Concentrate	Pentachloronitrobenzene.
005481–00214	PCNB Soil & Turf Liquid Drench	Pentachloronitrobenzene.
005481–00215	PCNB 2LF Liquid Flowable	Pentachloronitrobenzene.
005481–00442	PCNB Flowable RTU Seed Protectant	Pentachloronitrobenzene.
005481–00443	PCNB 2 Flowable Turf & Ornamental Soil Fungicide	Pentachloronitrobenzene.
005481–00444	PCNB 10G Turf & Ornamental Soil Fungicide	Pentachloronitrobenzene.
005481–00445	PCNB ST Liquid Flowable Seed Treatment Fungicide	Pentachloronitrobenzene.
005481–00450	PCNB 20% WDG Soil Fungicide	Pentachloronitrobenzene.
005481–00464	Parflo 6F	Pentachloronitrobenzene.
005481–00465	Par-Flo	Pentachloronitrobenzene.
005481–00471	Win-Flo 6F	Pentachloronitrobenzene.
005481–00472	Parflo 4F	Pentachloronitrobenzene.
005481–08982	Terraclor 2EC	Pentachloronitrobenzene.
005481–08984	Terraclor 10% Granular Soil Fungicide	Pentachloronitrobenzene.
005481–08985	Greenback Lawn Fungicide	Pentachloronitrobenzene.
005481–08986	Turfcide Emulsifiable Fungicide	Pentachloronitrobenzene.
005481–08987	Terraclor Super X Emulsifiable	Pentachloronitrobenzene & Etridiazole.
005481–08991	Terraclor Flowable Fungicide	Pentachloronitrobenzene.
005481–08993	Terraclor Super X 18.8G	Pentachloronitrobenzene & Etridiazole.
005481–08994	Turfcide 15G	Pentachloronitrobenzene.
005481–08995	Terraclor 15G	Pentachloronitrobenzene.
005481–08997	Terrazan 24% Emulsifiable Concentrate	Pentachloronitrobenzene.
005481–08998	Turfcide WDG	Pentachloronitrobenzene.
005481–09033	Gustafson Terra-Coat L–205N	Pentachloronitrobenzene & Etridiazole.
005481–09035	Gustafson Terra-Coat LT–2N	Pentachloronitrobenzene.
005481–09039	Trigran-S Seed Protector	Pentachloronitrobenzene.
005785–00042	Brom-O-Gas 2%	Methyl bromide (NO INERT USE) & Chloropicrin.
010163–00228	Mesurol Pro	Methiocarb.
010163–00229	Mesurol 75% Concentrate	Methiocarb.
010163–00232	Mesurol 2% Bait For Homeowner Use	Methiocarb.
010163–00252	Mesurol 75 WDG	Methiocarb.
010466–00037	Ultra-Fresh 15	Diiodomethyl p-tolyl sulfone.
044446–00077	Hub States A–20 Procide Insecticide	Piperonyl Butoxide, Pyrethrins (NO INERT USE).

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA Registration No.	Product name	Chemical name
044446–00078	V–230	MGK 264, Piperonyl Butoxide, Pyrethrins (NO INERT USE).
047000–00102	CT Crack And Crevice	MGK 264, Piperonyl Butoxide, Propoxur, Pyrethrins (NO INERT USE).
047000–00165	R & M Aqueous Residual Flea & Tick #1	Permethrin, Pyrethins (NO INERT USE).
047000–00166	R+M Flea And Tick Dip #1	MGK 264, Piperonyl Butoxide, Pyrethrins (NO INERT USE).
053883–00270	CSI Gamma-Cyhalothrin Synergized Topical Insecticide Pour-On.	Piperonyl Butoxide, Gamma-Cyhalothrin.
061282–00055	BioSentry 904	Alkyl* dimethyl benzyl ammonium chloride *(61% C12, 23% C14, 11% C16, 2.5% C18 2.5% C10 and trace of C8), Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16), 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride and Tributyltin oxide (NO INERT USE).
061282–00058	Tributyl Tin Oxide	Tributyltin Oxide (NO INERT USE).
062719–00299	Frontrow	Cloransulam-methyl, Flumetsulam.
070506–00086	Agvalue Desmedipham	Desmedipham.
070506–00087	DES	Desmedipham.
CA–040025	Riverdale Endurance Herbicide	Prodiamine.
MN–010003	Treflan H.F.P.	Trifluralin.
MN–100004	Treflan H.F.P.	Trifluralin.
WA–010015	Betamix Herbicide	Phenmedipham, Desmedipham.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA Company No.	Company name and address
264 WA–010015	Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
270	Farnam Companies, Inc., 301 West Osborn Road, Phoenix, AZ 85013.
432	Bayer Environmental Science, A Division of Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.
2724	Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
4787	Cheminova A/ S, Agent: Cheminova Inc., 1600 Wilson Blvd. Suite 700, Arlington, VA 22209.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660.
5785	Great Lakes Chemical Corporation, (A Chemtura Company), 1801 Highway 52 West, P.O. Box 2200, West Lafayette, IN 47906.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
10466	Thomson Research Associates, Agent: Laird's Regulatory Consultants Inc., Shenstone Est. 17804 Braemar Pl., Leesburg, VA 20176–7046.
44446	Questvapco Corporation, P.O. Box 624, Brenham, TX 77834.
47000	Chem-Tech, LTD., 4515 Fleur Dr. #303, Des Moines, IA 50321.
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507–1041.
61282	Hacco, Inc., 110 Hopkins Drive, Randolph, WI 53956–1316.
62719, MN–010003, MN–100004	Dow AgroSciences LLC, 9330 Zionsville Rd. 308/ 2E, Indianapolis, IN 46268–1054.
70506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
CA–040025	Nufarm SA, Agent: Nufarm Americas, Inc., 4020 Aerial Center Pkwy. Suite 101, Morrisville, NC 27560.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the November 20, 2013 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are the subject of this notice is March 13, 2014. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or

amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of November 20, 2013 (78 FR 69666) (FRL–9902–40). The comment period closed on December 20, 2013.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

A. For Products (044446–00077 and 044446–00078)

The registrant may continue to sell and distribute existing stocks of these products listed in Table 1 of Unit II. until September 9, 2015. Thereafter, the registrant is prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. For Product (000264–00621)

The registrant may continue to sell and distribute existing stocks of this product listed in Table 1 of Unit II. until November 20, 2018. Thereafter, the registrant is prohibited from selling or distributing product listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrant may sell, distribute, or use existing stocks of product listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product.

C. For all Other Products Identified in Table 1 of Unit II

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until March 13, 2015, which is 1-year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 5, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–05388 Filed 3–12–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 14–325]

Closed Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the closed meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's closed meeting and agenda.

DATES: Wednesday, March 26, 2014, 1:30 p.m.

FOR FURTHER INFORMATION CONTACT: Carmell Weathers, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–2325 or *Carmell.Weathers@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 14–325 released March 10, 2014. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a closed meeting to be held Wednesday, March 26, 2014 at 1:30 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Washington, DC.

The notice of this meeting was first published in the **Federal Register** on March 13, 2014, 13 days in advance of the meeting on March 26, 2014. While the publication did not meet the 15-day requirement for advance publication, exceptional circumstances warrant proceeding with the March 26, 2014 NANC meeting. The NANC Chair, Vice Chair, and most NANC members were informed of the potential March 26 meeting via emails in January. The rest of the NANC members were notified informally of the proposed March 26 meeting in January or February, and on more than one occasion. A significant number of Council members have made business and travel plans in accordance with this schedule, and there is no date within one month of the planned date that will accommodate Council members' schedules. Delaying the meeting will also cause undue financial burdens on many of the members who have made travel arrangements. Further, recognizing the delay in **Federal Register** publication, the agency issued a Public Notice of this meeting on March 10, 2014, to mitigate the late **Federal Register** publication delay and as an additional way of advising the public of this meeting. The agency has also posted all NANC meeting dates on the FCC NANC Web site to further inform the public. As the March meeting date has been disseminated to all NANC members and the public, the March 26, 2014 meeting has now been broadly announced.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please

allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Wednesday, March 26, 2014, 1:30 p.m.

1. Discussion of the Local Number Portability Administrator selection process and bids submitted by vendor(s) that want to become the LNPA, followed by a vote of the NANC members on submitting a recommendation to the FCC for vendor(s) selection and regarding the LNPA selection process.

Federal Communications Commission.

Ann Stevens,

Deputy Division Chief, Wireline Competition Bureau.

[FR Doc. 2014–05707 Filed 3–11–14; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 10, 2014.

TIME AND DATE: 10:00 a.m., Thursday, March 20, 2014

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Connolly-Pacific Co.,* Docket Nos. WEST 2011–1064–RM, et al. (Issues include whether the Administrative Law Judge erred in applying certain standards to the operator's stone and rock mining operations.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–05609 Filed 3–11–14; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 8:30 a.m. March 20, 2014.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the February 24, 2014 Board Member Meeting.
2. Monthly Reports.
   a. Monthly Participant Activity Report
   b. Monthly Investment Policy Review
   c. Legislative Report
3. L Fund Additional Investment Options.
4. Office of Resource Management Report and Summary of Employee Viewpoint Survey.
5. Office of Technology Services Report.

Parts Closed to the Public

1. Procurement.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: March 11, 2014.

James B. Petrick,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2014–05616 Filed 3–11–14; 11:15 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2013–02; Docket No: 2013–0002; Sequence 12]

Federal Management Regulation; Delegations of Lease Acquisition Authority—Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of FMR Bulletin C–2, Delegations of Lease Acquisition Authority.

SUMMARY: The purpose of this notice is to announce FMR Bulletin C–2. The U.S. General Services Administration (GSA) recently completed a review of agencies' lease files for space acquired using a delegation of leasing authority from GSA in accordance with Federal Management Regulation (FMR) Bulletin 2008–B1 (Bulletin 2008–B1). FMR Bulletin C–2 clarifies the conditions, restrictions and reporting requirements specified in the delegation of authority and updates weblinks, the Simplified Lease Threshold and regulation references specified in FMR Bulletin 2008–B1. This bulletin is in keeping with the spirit of Executive Order 13327, ''Federal Real Property Asset Management,'' to maximize the increased governmentwide emphasis on real property inventory management. FMR Bulletin C–2 and all other FMR bulletins may be accessed at *http://www.gsa.gov/fmrbulletins.*

DATES: March 13, 2014.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Mary Pesina, Director, Center for Lease Delegations, Office of Leasing, Public Buildings Service, at 202–236–1686, or *mary.pesina@gsa.gov.*

SUPPLEMENTARY INFORMATION: Federal Property Management Regulation (FPMR) Bulletin D–239, published in the **Federal Register** on October 16, 1996 (61 FR 53924), announced a new GSA leasing program called ''Can't Beat GSA Leasing'' and the delegation of lease acquisition authority issued by the Administrator of General Services to the heads of all Federal agencies in his letter of September 25, 1996. GSA Bulletin FPMR D–239, Supplement 1, published in the **Federal Register** on December 18, 1996 (61 FR 66668), issued supporting information for the delegation. GSA Bulletin FMR 2005–B1, published in the **Federal Register** on May 25, 2005 (70 FR 30115), revised and re-emphasized certain procedures associated with the delegation of General Purpose leasing authority.

On August 24, 2007, the Government Accountability Office and the GSA Office of Inspector General issued a report recommending that GSA provide centralized management and oversight of all lease delegation activities to ensure that all federal agencies procuring leased space under delegated authority follow the conditions, restrictions and reporting requirements specified in the delegation of authority. In response to the audit recommendations, GSA centralized its management and oversight of all GSA-authorized lease delegations and, on November 19, 2007, published FMR Bulletin 2008–B1 in the **Federal Register** (72 FR 65026), which limited General Purpose delegations of lease authority to no more than 19,999 rentable square feet of space and implemented management controls commensurate with the risks at that threshold. In addition, FMR Bulletin 2008–B1 established new requirements

for agencies requesting authorization to use the General Purpose and Special Purpose delegation authority and established revised reporting requirements, including the submission of documents to GSA at various points in the lease acquisition process, and required agencies to have in place an organizational structure to support the delegation, ensure compliance with all applicable laws, regulations and GSA directives governing the lease acquisition and administer the lease. FMR Bulletin 2008–B1 also addressed requirements for another longstanding delegation for Categorical space, as provided in 41 CFR part 102–73.

FMR Bulletin C–2 re-emphasizes and updates the conditions, restrictions and reporting requirements applicable to GSA leasing delegations.

Dated: March 10, 2014.

Anne E. Rung,

Associate Administrator.

[FR Doc. 2014–05548 Filed 3–12–14; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–14–14BB]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Rapid HIV Home-Testing among MSM Trial—New—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Innovative testing strategies are needed to reduce levels of undiagnosed HIV infection and increase early access to treatment. Rapid home HIV tests may play an important role in efforts to reduce both HIV morbidity and mortality. Given the unrelenting HIV crisis among MSM and the release into the market of a rapid HIV test for at-home use, it is necessary to evaluate the impact of providing rapid HIV home-test kits on repeat HIV testing, linkage to care, partner testing, serosorting, and HIV sexual risk behaviors among MSM. This information will assist the Division of HIV/AIDS Prevention (DHAP) in developing recommendations, future research and program needs concerning home-testing for MSM.

Specific aims

This study is a randomized trial which aims to evaluate the use and effectiveness of home-test kits as a public health strategy for increasing testing among MSM. A secondary aim of the randomized trial is to evaluate the extent to which MSM (both HIV-negative and HIV-positive) distribute HIV home-test kits to their social and sexual networks.

The population for the randomized trial will be men over the age of 18 years who self-report that they have had anal sex with at least one man in the past year. We will recruit approximately 3,200 men who report their HIV status to be negative or who are unaware of their HIV status and 300 men who self-report that they are HIV-positive. Men will be recruited from the 12 cities: Atlanta, Baltimore, Chicago, Dallas, the District of Columbia, Houston, Los Angeles, Miami, New York City, Philadelphia, San Francisco, and San Juan. We will ensure that at least 20% of participants are black and at least 15% are Hispanic. Recruitment will be conducted through banner advertisements displayed on social networking sites such as Facebook and dating and sex-seeking sites such as Manhunt and Adam4Adam.

This study also has a qualitative component that aims to examine the experiences of participants in the randomized control trial. Participants for the qualitative data collection will be drawn from the randomized control trial. Two data collection techniques will be used: Focus group discussions (FGD) (both online and in-person) and individual in-depth interviews (IDIs).

CDC is requesting approval for a 3-year clearance for data collection. All participant consenting and data collection for the RCT will be completed using an online reporting system. Data will be collected using an eligibility screener, an online study registration process, a baseline survey, HIV test results reporting system, and follow-up surveys. Men will be asked to use the study Web site or download and access a secure cell phone application prior to enter results of their rapid HIV home-tests that they receive and conduct at home and to take the follow-up surveys which will collect information on HIV testing results and behaviors and sexual activities. Focus group discussions and in-depth interviews will be used to examine experiences of participants in the RCT.

The duration of the eligibility screener is estimated to be 5 minutes; the RCT consent 10 minutes; the study registration process 5 minutes; the baseline survey 15 minutes; the reporting of home-test results 5 minutes; the follow-up surveys 10 minutes; the focus group and individual interview consents 10 minutes each; the focus group discussion 1 hour and 30 minutes; and the in-depth interviews 1 hour and 15 minutes.

There is no cost to participants other than their time. The total estimated annual burden hours are 7,085.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
Prospective Participant	Eligibility Screener	24,000	1	3/60
Enrolled participant	Study Registration	14,000	1	5/60
Enrolled participant	Consent for RCT	3,200	1	10/60
Enrolled participant	Baseline Survey for RCT	3,200	1	15/60
Enrolled participant	Baseline Survey for HIV-positive group	300	1	15/60
Enrolled participant	Reporting of Home-test Results during study	1,600	3	5/60
Enrolled participant	Follow-up Surveys for RCT	3,200	4	10/60
Enrolled participant	Follow-up Surveys for HIV positive group	300	2	10/60
Enrolled participants	Reporting of Home-test Results at completion of study	3,200	1	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
Enrolled participant	Focus group consent	216	1	10/60
Enrolled participant	Focus group discussion	216	1	1.5
Enrolled participant	Individual in-depth interview guide consent	30	1	10/60
Enrolled participant	Individual in-depth interview guide	30	1	1.5

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. 2014–05482 Filed 3–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–14–0895]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or 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

Community-based Organization Monitoring and Evaluation of Respect (OMB No.0920–0895 exp. 8/31/2014)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC began formally partnering with Community-based Organizations (CBOs) in the late 1980s to expand the reach of HIV prevention efforts. CBOs were, and continue to be, recognized as important partners in HIV prevention because of their history and credibility with target populations and their access to groups that may not be easily reached. Over time, CDC's program for HIV prevention by CBOs has grown in size, scope, and complexity to respond to changes in the epidemic, including the diffusion and implementation of Effective Behavioral Interventions (EBIs) for HIV prevention.

CDC's EBIs have been shown to be effective under controlled research environments, but there is limited data on intervention implementation and client outcomes in real-world settings (as implemented by CDC-funded CBOs). The purpose of Community-based Organization Monitoring and Evaluation of Respect (CMEP-Respect) is to: (a) Assess the fidelity of the implementation of the selected intervention at the CBO; and (b) improve the performance of CDC-funded CBOs delivering the Respect intervention by monitoring changes in clients' self-reported attitudes and beliefs regarding HIV and HIV transmission risk behaviors after participating in Respect.

CDC funded four (4) CBOs to participate in CMEP-Respect for five (5) years (September 2010-August 2015). From September 1, 2012 through January 31, 2014, baseline surveys were conducted with 684 participants; 90-day follow up surveys were completed with 459 participants, and 180-day follow up surveys were completed with 343 participants.

CDC is requesting additional time to complete follow up surveys at 90- and 180-days for participants completing the intervention on or before August 31, 2014. Following their participation in the Respect intervention, participants will complete an 18 minute, self administered, computer based interview at two follow-up time points (90- and 180-days following the Respect intervention) to assess their HIV-related attitudes and behavioral risks. CBOs will be expected to retain 80% of these participants at both follow-up time points.

Throughout the project, funded CBOs will be responsible for managing the daily procedures of CMEP-Respect to ensure that all required activities are performed, all deadlines are met, and quality assurance plans, policies and procedures are upheld. CBOs will be responsible for participating in all CDC-sponsored grantee meetings related to CMEP-Respect.

Findings from this project will be primarily used by the participating CBOs. The CBOs may use the findings to: (a) Better understand if the outcomes are different across demographic and behavioral risk groups as well as agency and program model characteristics; and (b) improve the future implementation, management, and quality of Respect. CDC and other organizations interested in behavioral outcome monitoring of Respect or similar HIV prevention interventions can also benefit from lessons learned through this project.

In this request, CDC is requesting approval for approximately 200 burden hours. There is no cost to respondents except for their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
General Population	90-day Follow-up Survey	320	1	18/60	96
CMEP-Respect grantees	90-day SDN Submission	4	12	5/60	4
General population	180-day Follow-up Survey	320	1	18/60	96
CMEP-Respect grantees	180-day SDN Submission	4	12	5/60	4
Total					200

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. 2014–05478 Filed 3–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–14–0006]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or 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

Statements in Support of Application of Waiver of Inadmissibility (OMB No. 0920–0006, Expiration 9/30/2014)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 212(a)(1) of the Immigration and Nationality Act states that aliens with specific health related conditions are ineligible for admission into the United States. The Attorney General may waive application of this inadmissibility on health-related grounds if an application for waiver is filed and approved by the consular office considering the application for visa. CDC uses this application primarily to collect information to establish and maintain records of waiver applicants in order to notify the U.S. Citizenship and Immigration Services when terms, conditions and controls imposed by waiver are not met.

CDC is requesting approval from the Office of Management and Budget (OMB) to collect this data (approximately 100 burden hours) for another three years.

There are no costs to respondents except their time to complete the application.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Physician	CDC 4.422–1	200	1	10/60	33
Physician	CDC 4.422–1a	200	1	20/60	67
Total					100

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. 2014–05529 Filed 3–12–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1423]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 14, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0046. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Importer's Entry Notice—(OMB Control Number 0910–0046)—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381) charges the Secretary of Health and Human Services, through FDA, with the responsibility of assuring foreign-origin, FDA-regulated foods, drugs, cosmetics, medical devices, radiological health, and tobacco products offered for import into the United States meet the same requirements of the FD&C Act as do domestic products, and for preventing products from entering the country if they are not in compliance. The discharge of this responsibility involves close coordination and cooperation between FDA headquarters and field inspectional personnel and the U.S. Customs Service (USCS), as the USCS is responsible for enforcing the revenue laws covering the very same products.

This collection of information gathers data for FDA-regulated products being imported into the United States and is being used by FDA to review and prevent imported products from entering the United States if the products do not meet the same requirements of the FD&C Act as domestic products.

Until October 1995, importers were required to file manual entries on OMB-approved forms that were accompanied by related documents. FDA did away with use of the paper forms effective October 1, 1995, to eliminate duplicity of information and to reduce the paperwork burden both on the import community and FDA. FDA then implemented an automated nationwide entry processing system, which enabled FDA to more efficiently obtain and process the information it requires to fulfill its regulatory responsibility.

Most of the information FDA requires to carry out its regulatory responsibilities under section 801 is already provided electronically by filers to USCS. Because USCS relays this data to FDA using an electronic interface, the majority of data submitted by the entry filer need be completed only once.

At each U.S. port of entry (seaport, landport, and airport) where foreign-origin, FDA-regulated products are offered for import, FDA is notified through USCS's Automated Commercial System (ACS) by the importer (or his/her agent) of the arrival of each entry. Following such notification, FDA reviews relevant data to ensure the imported product meets the standards as required for domestic products, decides on the admissibility of the imported product, and informs the importer and USCS of its decision. A single entry frequently contains multiple lines of different products. FDA may authorize products listed on specific lines to enter the United States unimpeded, while other products listed in the same entry may be held pending further FDA review/action.

All entry data pass through a screening criteria program resident on a USCS computer. This screening program was developed and is maintained by FDA. This electronic screening criteria module makes the initial screening decision on every entry of foreign-origin, FDA-regulated product. Almost instantaneously after the entry is filed, the filer receives FDA's admissibility decision for each entry, i.e., ''MAY PROCEED'' or ''FDA REVIEW.''

In addition to the information collected by USCS, FDA requires four additional pieces of information that were not available from USCS's system in order to make an admissibility decision for each entry. These data elements include the FDA Product Code, FDA country of production, manufacturer/shipper, and ultimate consignee. OMB has previously approved the automated collection of these four data elements for tobacco products that filers could provide to FDA along with other entry-related information. Providing this information to FDA results in importers receiving an FDA admissibility decision more expeditiously, e.g., the quantity, value, and Affirmation(s) of Compliance with Qualifier(s).

Since the inception of the interface with ACS, FDA's electronic screening criteria program has been applied nationwide. This eliminates issues such as ''port shopping'' (attempts to intentionally slip products through one FDA port when refused by another, or filing entries at a port known to receive a high volume of entries). Every electronically submitted entry line of foreign-origin, FDA-regulated product undergoes automated screening and the screening criteria can be set to be as specific or as broad as applicable; changes are immediately effective. This capability is of tremendous value in protecting the public if there is a need to immediately halt specific product from entering the United States.

If the data in this collection of information is not collected, FDA could not adequately meet its statutory responsibilities to regulate imported products, nor control potentially dangerous products from entering the U.S. marketplace.

In the **Federal Register** of November 27, 2013 (78 FR 70951), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA imported products	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Non-Tobacco	3,406	1,089	3,709,134	[2] 0.14	519,279
Tobacco	330	68	22,440	[2] 0.14	3,142
Total					522,421

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] (8 minutes).

The hourly burden for this information collection is based on FDA's averaging of data obtained during a survey of nine representative filers nationwide and FDA's experience. For purposes of comparison of hourly burden, the filers also were requested to provide the same information with regard to filing entries manually. FDA felt that the average time for completing either electronic or manual entries was very similar.

Based on data collected by FDA's survey of nine filers and its experience, the total annual burden to the import community to submit information electronically for 3,731,574 average annual responses was 522,421 hours. The previously OMB-approved hours per response (0.14 hours) are expected to remain the same.

This burden includes the time FDA estimates it will take respondents to compile and provide documents to FDA for those entries where FDA cannot make an admissibility decision based on the electronic data alone. Based on the survey of nine filers and FDA's past experience, FDA estimates that there will be no additional costs to provide import data electronically to FDA, as filers already have equipment and software in place to enable them to provide data to USCS via the automated system. Therefore, no additional software or hardware need be developed or purchased to enable filers to file the FDA data elements at the same time they file entries electronically with USCS.

Dated: March 7, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–05516 Filed 3–12–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Evaluation of National Institutes of Health International Bilateral Programs (FIC, NCI, NIAAA, NIAID, NICHD, NIDA, NINDS, NIMH, OAR)

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 Cancer Institute (NCI), 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: Julie Schneider, Program Director, Center for Global Health, National Cancer Institute, 9609 Medical Center Dr., RM 3W564, Rockville, MD 20850 or call non-toll-free number 240–276–5795 or Email your request, including your address to: *schneidj@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Evaluation of National Institutes of Health International Bilateral Programs (FIC, NCI, NIAAA, NIAID, NICHD, NIDA, NIMH, NINDS, OAR), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This submission is a request for OMB to approve the Evaluation of National Institutes of Health (NIH) International Bilateral Programs for three years. The bilateral awards are made through the Funding Opportunity Announcement mechanism and administrative supplements, meaning they are funded by set-aside funds that are separate from the general pool of research program grant funds used to support investigator initiated research at NIH. The bilateral programs to be evaluated are the U.S.-China Program for Biomedical Research Cooperation, U.S.—India Bilateral Collaborative Research Partnerships on the Prevention of HIV/AIDS and Co-morbidities, U.S.-Russia Bilateral Collaborative Research Partnerships on the Prevention and Treatment of HIV/AIDS and Co-morbidities, and U.S.-South Africa Program for Collaborative Biomedical Research. These programs are funded and administered by various combinations of the following institutes: Fogarty International Center (FIC), the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD), National Cancer Institute (NCI), National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institute for Allergy and Infectious Diseases (NIAID), National Institute on Drug Abuse (NIDA), National Institute of Mental Health (NIMH), National Institute of Neurological Disorders and Stroke

(NINDS), and the Office of AIDS Research (OAR). While these programs differ, their underlying concept is the same; they require U.S. scientists to collaborate with scientists from other countries in order to conduct scientifically meritorious investigations of mutual interest to both countries. The proposed evaluation requests information about (1) accomplishments of the awards, (2) unique findings or opportunities due to the international collaborations, and (3) successes and challenges of these collaborations. The information will be collected one year into the award and at the end of the award, when possible. This information is needed to evaluate the effectiveness of these programs across NIH.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 128.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Principal Investigators Administrative Supplements	24	1	1	24
Principal Investigators Other Mechanisms	52	2	1	104

Dated: March 7, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–05514 Filed 3–12–14; 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.

Rabies Vaccine for the Oral Immunization of Domesticated Animals, Wildlife and Feral Animals

Description of Technology: This invention, developed by the CDC and collaborators, entails a live, attenuated recombinant rabies virus vaccine that can elicit an effective anti-rabies immune response in animal recipients. Inoculation with a live, attenuated, rabies virus allows for the optimized production of immunity in the absence of pathogenicity. Oral administration of rabies vaccines is often a preferred route of vaccine delivery because it is most effective in wildlife. Unfortunately, availability of an oral vaccine for canines has been a significant hurdle to date.

This vaccine technology could be used for immunization of stray dogs by an oral route. In developing nations, more than 90% of human exposure events and 99% of human deaths due to rabies are caused by rabid dogs. Using this vaccine with a broadly implemented oral vaccination strategy provides a promising opportunity for reducing transmission of rabies between stray dogs and, thereby, increasing protection for people.

Potential Commercial Applications:

- Wildlife and humane shelter rabies prevention and control programs
- Improved rabies vaccines for pets and livestock
- Humane, targeted approach to elimination of rabies reservoirs in feral animal populations

Competitive Advantages:

- Safe and effective
- Oral immunization is the most practical and efficient method of rabies vaccination of wildlife and feral animals
- Vaccine has demonstrated protection in vivo
- Recombinant, non-neuroinvasive virus expressing a neuroinvasive glycoprotein and/or pro-apoptotis gene safely induces a robust and desirable immunological response

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Charles E. Rupprecht (CDC), et al.

Intellectual Property: HHS Reference No. E–470–2013/0—U.S. Patent No. 7,074,413 issued 11 Jul 2006.

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

Cable-Line Safety System: Electro/Hydraulic Emergency Stop Device for a Winch, Drum or Capstan

Description of Technology: This CDC-developed invention entails a system of electrical and hydraulic circuits used to stop a rotating winch in an emergency. Amongst other locations, one stop switch can be positioned on a capstan winch horn. This location makes it available to a victim entangled in rope being retrieved on a gypsy drum. As designed, the stop circuit could be used with an electrically, hydraulically or pneumatically operated winch. A variant of this safety system has been successfully tested on a purse seining fishing vessel in Alaskan waters.

Potential Commercial Applications:

- Retrofitting existing winches for additional safety and adherence to possible future regulations
- Specifically designed and tested for the marine/fishing industries
- Applications in mining, construction, forestry, and/or off-road automotive industries
- Workers' well-being concern groups
- Insurers of fishing vessels; also mining, construction and forestry operations
- Manufacturers of cable reel trailers and wire-drawing machinery

Competitive Advantages:

- Complies with numerous international safety regulations requiring winches, drums and capstans to have a master on/off switch in easy reach for worker safety
- Can be packaged as a 'retrofit kit' for integration with current commercial winch/drum usage

Development Stage:

- In situ data available (on-site)
- Prototype

Inventors: Chelsea Woodward, Todd Ruff, Curtis Clark, Robert McKibbin, John Bevan, Greg Miller, Wayne Howie, Louis Martin, Jennifer Lincoln (all inventors from CDC–NIOSH).

Intellectual Property: HHS Reference No. E–355–2013/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technologies:

- HHS Reference No. E–504–2013/0
- HHS Reference No. E–567–2013/0
- HHS Reference No. E–568–2013/0
- HHS Reference No. E–643–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

Lead Detection Wipes for Potentially Contaminated Surfaces

Description of Technology: This CDC-developed invention relates to a method for the detection of lead on surfaces (such as, for example, skin, floors, walls, windows sills) using a 'handwipe' system and a chemical test effecting a characteristic color change if contaminating lead is present. This invention is especially useful in detecting the presence of lead on skin and assessing the effectiveness of hand washing in removal of lead from the skin of exposed individuals. Further, this invention is useful in field evaluation for the presence of lead, exposure of individuals to lead, and the effectiveness of its subsequent removal in the workplace, home, school, and similar environments.

Potential Commercial Applications:

- Suitable for lead-testing surfaces such as floors, walls, windowsills and human skin
- Evaluation of lead-removal effectiveness from surfaces in homes, hospitals, workplaces and schools
- Confirming hand/skin/shoe/clothing-washing effectiveness of lead removal for military, target range personnel

Competitive Advantages:

- Simple color-change readout indicates the presence of lead on a surface
- Rapid test; lead concentration can be inferred by degree of color shift
- Safe for use on skin

Development Stage:

- In vitro data available
- In situ data available (on-site)

Inventors: Eric J. Esswein, Mark F. Boeniger, Kevin E. Ashley (all of CDC).

Publications:

1. Ashley K. Field-portable methods for monitoring occupational exposures to metals. J Chem Health Saf. 2010;17(3):22–8. [*http://dx.doi.org/10.1016/j.jchas.2009.07.002*]
2. NIOSH Manual of Analytical Methods (NMAM), Fourth Edition. Method 9105, Issue 1—Lead in Dust Wipes by Chemical Spot Test Method (Colorimetric Screening Method), 15 March 2003. U.S. National Institute for Occupational Safety and Health (NIOSH), Cincinnati, OH. [*http://www.cdc.gov/niosh/docs/2003–154/pdfs/9105.pdf*]
3. Esswein EJ, et al. Handwipe Method for Removing Lead from Skin. Journal of ASTM International. 2011 May;8(5):Paper ID JAI103527. [*http://dx.doi.org/10.1520/JAI103527*]

Intellectual Property: HHS Reference No. E–336–2013/0—U.S. Patent No. 6,248,593 issued 19 Jun 2001.

Related Technology:

- HHS Reference No. E–356–2013/0
- HHS Reference No. E–359–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

Mining Safety: Personal Dust Monitor Filters for Accurate, Quantifiable Spectrometric Analysis and Assessment of Worker Exposure Levels

Description of Technology: This CDC-developed invention pertains to a novel dust monitor filter that is specially constructed of organic materials for spectrometric analysis, ultimately allowing for detection and accurate quantification of a particular chosen analyte (e.g., crystalline silica/quartz dust that may lead to silicosis).

For miners, the risk of lung disease increases with the extent of dust exposure, and coal worker's pneumoconiosis (aka, black lung disease) and silicosis are still dangers routinely faced by those in the industry. Expectedly, both the concentration and the composition of airborne particulate matter present in mining environments are points of regulatory concern. For some time, collecting airborne dust samples and subsequent determination of quartz content have been integral for assessing mine worker exposure and demonstrating compliance with US Federal regulations.

Unfortunately, highly accurate spectrometric detection and quantification of particulate exposure has not always been possible. Generally, the filters used in existing oscillating microbalances (such as the TEOM® monitor) have been specially designed to for hydrophobicity, in order to retain as little moisture as possible on the filter. These specialized hydrophobic filters (and/or their mounting components) contain inorganic compounds that cannot be readily subjected to thermal or chemical destruction—a necessary first step of many instrumental analytical methods, such as spectroscopy.

This CDC-developed filter consists of entirely ashable material, making it ideal for spectrometric analysis and rapid exposure assessment. As an example, this dust monitor filter can be made entirely of organic materials and designed for quick, easy ashing that will not produce interference with the spectroscopic characteristics of the chosen analyte(s). Further, filter ashing can be carried out by a variety of methods: thermal ashing, microwave ashing, low temperature ashing, or chemical destruction.

Potential Commercial Applications:

- Personal dust monitors worn wherever dust exposure levels and the presence of potentially injurious materials is evaluated
- Occupationally-mandated pneumoconiosis, asbestosis and/or silicosis prevention and monitoring programs, for complying with safety regulations
- Miners' wellness concern groups and insurance companies

Competitive Advantages:

- Novel dust-monitoring instrument capable of providing near rapid particulate exposure information to miners/users
- Improves upon older technology by allowing for accurate detection and quantification of chosen analyte(s) and, unlike other filters, does not produce overlap or interfere with spectroscopic analysis
- Filter can be easily ashed for analysis by thermal ashing, microwave ashing, low temperature ashing, or chemical destruction

Development Stage:

- Early-stage
- In vitro data available

Publication:

Tuchman DP. Implementing infrared determination of quartz particulates on novel filters for a prototype dust monitor. J Environ Monit. 2008 May;10(5):671–8. [PMID 18449405]

Intellectual Property: HHS Reference No. E–312–2013/0—U.S. Patent No. 7,947,503 issued 24 May 2011.

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

Computer Controlled Aerosol Generator With Multi-Walled Carbon Nanotube Inhalation Testing Capabilities

Description of Technology: This invention pertains to a CDC–NIOSH developed sonic aerosol generator that provides a controllable, stable concentration of particulate aerosol over a long period of time for aerosol exposure studies. Specifically, in situ testing data indicate uniform aerosol stability can be maintainable for greater than 30 hours at concentrations of 15 mg/m3 or more. Additionally, the technology was specifically developed for, and validated in, animal studies assessing exposure to airborne multi-walled carbon nanotubes (MWCNT). It has been suggested that workers may be at risk for exposure to nanosized particles during the manufacture, handling, and cleanup of engineered nanomaterials. Compared to other technologies, this NIOSH aerosol generator is particularly helpful when used for generating high testing concentrations of MWCNT aerosols that more accurately represent particulate levels that may be seen in a workplace environment.

Potential Commercial Applications:

- Studying the size and shape of the aerosolized particles produced from simple vibrations of bulk material
- Toxicological investigations and risk assessment of aerosol exposures, especially those related to nanoparticle manufacturing.
- Any aerosolization application where the aggregating ''bird's nest'' tendencies of airborne multi-walled carbon nanotubes must be overcome

Competitive Advantages:

- Fully automated system with integrated feedback control for optimized stability in testing
- Maintains concentration of aerosols for >30 hours at concentrations of 15 mg/cubic meter or more
- Capable of generating high concentrations of aerosols that more accurately represent the levels seen in a workplace environment
- System insures that each run produces a constant particle concentration, air flow, pressure, temperature and humidity within a testing chamber

Development Stage:

- In vitro data available
- In vivo data available (animal)
- In situ data available (on-site)
- Prototype

Inventors: Walter G. McKinney, David G. Frazer, Bean Chen (all of CDC)

Publications:

1. McKinney W, et al. Computer controlled multi-walled carbon nanotube inhalation exposure system. Inhal Toxicol. 2009 Oct;21(12):1053–61. [PMID 19555230]
2. Porter DW, et al. Acute pulmonary dose-responses to inhaled multi-walled carbon nanotubes. Nanotoxicology. 2013 Nov;7:1179–94. [PMID 22881873]
3. Porter DW, et al. Mouse pulmonary dose- and time course-responses induced by exposure to multi-walled carbon nanotubes. Toxicology. 2010 Mar 10;269(2–3):136–47. [PMID 19857541]
4. Chen BT, et al. Multi-walled carbon nanotubes: sampling criteria and aerosol characterization. Inhal Toxicol. 2012 Oct;24(12):798–820. [PMID 23033994]

Intellectual Property: HHS Reference No. E–156–2013/0—U.S. Patent Application No. 12/871,453 filed 30 Aug 2010.

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov.*

Dated: March 10, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–05472 Filed 3–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of 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 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 Institute of Child Health and Human Development Special Emphasis Panel; Collaborative Perinatal Project (CPP) Mortality Linkage Study Data Coordinating Center.

Date: April 8, 2014.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: March 7, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05474 Filed 3–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Resource-Related Research Projects in Lung Diseases.

Date: April 8, 2014.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road NW., Washington, MD 20015.

Contact Person: Susan Wohler Sunnarborg, Ph.D. Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 *sunnarborgsw@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Ancillary Studies in Clinical Trials.

Date: April 11, 2014.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly St., Bethesda, MD 20814.

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and

Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: *March 7, 2014.*

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05473 Filed 3–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Loan Repayment Program.

Date: April 15, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: March 7, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05475 Filed 3–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed 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 Child Health and Human Development Special Emphasis Panel.

Date: April 9, 2014.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pelvic Floor Disorders Review.

Date: April 10, 2014.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, 301–435–6973, *David.Weinberg@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mouse model of Dyslexia Risk Genes.

Date: April 11, 2014.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, 301–435–6973, *David.Weinberg@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Research on tuberculosis for HIV-infected mothers and children in India.

Date: April 14, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd. Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Routes to Improving Population Health.

Date: April 16, 2014.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 7, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05476 Filed 3–12–14; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: April 1, 2014.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry & Macromolecular Biophysics.

Date: April 3, 2014.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Albert Wang, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: April 8–9, 2014.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 7, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–05477 Filed 3–12–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: SAMHSA Disaster Technical Assistance Center Disaster Behavioral Health Needs Assessment and Customer Satisfaction Survey (OMB No. 0930–0325)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval for a revision to the data collection associated with the SAMHSA Disaster Technical Assistance Center (DTAC) Disaster Behavioral Health Needs Assessment and Customer Satisfaction Survey (OMB No. 0930–0325), which expires on June 30, 2014. The data collection instruments include the Disaster Behavioral Health Needs Assessment (NAS)—State/Territory Version, the NAS—Local Provider Version, the Disaster Behavioral Health Follow-Up Interview Guide (NAFI), and the SAMHSA DTAC Customer Satisfaction Survey (CSS). All of the proposed data collection efforts will provide feedback on the overall effectiveness of SAMHSA DTAC's services, ongoing needs at the national level, and areas that require enhanced technical assistance (TA) services.

SAMHSA DTAC will be responsible for administering the four data collection instruments and analyzing the data. SAMHSA DTAC will use data from the instruments to inform current and future TA activities and to ensure these activities continue to align with state and local needs.

A 3-year clearance is being requested to continue the previously cleared data collection activities. The components of the data collection are listed and described below, and a summary table of the number of respondents and respondent burden has also been included.

Disaster Behavior Health Needs Assessment Surveys (NAS). The NAS will assist SAMHSA DTAC in identifying the current needs of states, territories, federally recognized tribes, and local organizations and agencies as they integrate disaster behavioral health (DBH) into all-hazards disaster planning and response. There are two instruments under the NAS—the *NAS—State/Territory Version* and the *NAS—Local Provider Version*. The NAS will assess the current gaps and needs at the state, territory, and local provider levels in disaster behavioral health (mental health and substance abuse) planning and response efforts and preferred methods for receiving training to address these needs. Revisions to these data collection efforts include eliminating unnecessary questions, collapsing questions to ease respondent burden, changing or adding questions and response options to address DBH needs identified through previous administrations of the NAS instruments, and revising the administration to occur every two years instead of annually. Both NAS instruments will be administered online and will be programmed to include simplified screens and intuitive navigational controls.

The NAS—State/Territory Version will be administered to all disaster mental health coordinators, disaster substance abuse coordinators, and DBH coordinators (coordinators responsible for both mental health and substance abuse disaster services) in the 50 states, the U.S. territories, and the District of Columbia, for a total of 77 participants. Coordinators will be asked to provide contact information for up to 10 local DBH service providers with whom they work. These local providers will be invited to participate in the NAS—Local Provider Version. SAMHSA DTAC anticipates inviting approximately 250 local providers to participate across a representative sample of the states and U.S. territories.

Disaster Behavioral Health Needs Assessment Follow-Up Interviews (NAFI). The NAFI will allow SAMHSA DTAC to gain a more nuanced understanding of the needs identified in the NAS. SAMHSA DTAC will use the NAFI to delve deeper into current DBH needs and specific findings from the NAS to identify gaps and trends in disaster behavioral health preparedness and response across the country and inform future TA for state, territory, and local behavioral health authorities. The instrument is designed to collect

indepth information useful for expanding and further enhancing the training and TA provided by SAMHSA DTAC, by SAMHSA DTAC, including tailoring resources to specific needs, providing resources in the most useful formats, and creating new resources to fill certain disaster behavioral health preparedness and response gaps. The NAFI will collect information on the following: (1) Familiarity with SAMHSA DTAC; (2) participant background and experiences; (3) general DBH-related needs; and (4) additional feedback related to specific needs identified in the NAS. This instrument is new under the proposed revision. The NAFI will be administered by telephone.

Participation in the NAFI will be solicited from up to 25 state or territory coordinators who completed the NAS—State/Territory Version and up to 25 local providers who completed the NAS—Local Provider Version. These individuals will be selected in such a manner as to obtain representation from various participants of various state/territory demographics, such as geographic region or frequency of disasters.

SAMHSA DTAC Customer Satisfaction Survey (CSS). The CSS will collect data from SAMHSA DTAC customers to ensure that the assistance SAMHSA DTAC provides is up-to-date, applicable, useful, and well received. Specifically, the CSS will collect the experiences and perspectives of: (1) Those who have requested TA (e.g., behavioral health coordinators, project coordinators, local providers) and (2) those who subscribe to SAMHSA DTAC e-communications. The CSS will assess the following: (1) familiarity with SAMHSA DTAC services and resources; (2) satisfaction with SAMHSA DTAC services and resources; (3) recommendations for enhancement of SAMHSA DTAC services and resources; and (4) participant background and demographics.

Revisions to this effort include modifications to the data collection instrument based on changes in SAMHSA DTAC services, modifications to the satisfaction rating scales to further increase clarity and efficiency of administration, and a reduced administration frequency (the proposed collection is for a twice annual administration as opposed to quarterly). The CSS will be administered by web and telephone.

Participation in the CSS will be solicited from all 50 states, the U.S. territories, and the District of Columbia. The survey will be administered to individuals who have requested TA within the 6 months prior to administration and those who are subscribed to DTAC's e-communications *SAMHSA DTAC Bulletin* or *The Dialogue* at the time of administration. During each administration, those who participated in the most recent administration of the CSS will be excluded.

Internet-based technology will be used to collect data via web-based surveys for the NAS and the CSS and for data entry and management of all proposed instruments. The average annual respondent burden is estimated below. The NAS instruments will be administered every 2 years. The CSS will be administered every six months. Table 1 represents the initial data collection and the burden for the first year. These estimates reflect the average annual number of respondents, the average annual number of responses, the time required for each response, and the average annual burden in hours.

TABLE 1—ANNUALIZED ESTIMATE OF RESPONDENT BURDEN

Type of respondent	Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours
State DBH Coordinator	NAS (State/Territory Version).	77	1	77	0.50	38.50
Local Provider	NAS (Local Provider Version).	150	1	150	0.50	75.00
State DBH Coordinator	DBHNA (State/Territory Version).	25	1	25	0.75	18.75
Local Provider	DBHNA (Local Provider Version).	25	1	25	0.75	18.75
TA Requestor	DTAC Customer Satisfaction Survey.	300	1	300	0.25	75.00
Total		577		577		226.00

Written comments and recommendations concerning the proposed information collection should be sent by April 14, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2014–05470 Filed 3–12–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Evaluation of SAMHSA Homeless Programs (OMB No. 0930–0320)—Extension

SAMHSA's Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT) is conducting an external evaluation of the impact of the Grants for the Benefit of Homeless Individuals (GBHI) and Services in Supportive Housing (SSH) programs. GBHI/SSH grant programs link substance abuse and mental health treatment with housing and other needed services and expand and strengthen these services for people with substance use and co-occurring mental health problems who are homeless. The national cross-site evaluation will assess the effectiveness, efficiency and sustainability of the GBHI/SSH project services for client abstinence, housing stability, homelessness, and related employment, criminal justice and services outcomes, as well as lessons learned to inform future efforts.

The Client Interview—Baseline and the Client Interview—6-Month Follow-up have been developed to assess program impact on client outcomes based on review of the literature and consultation with a panel of national experts, grantees and SAMHSA. The Client Interview is comprised of questions (unique from the Government Performance and Results Act (GPRA) Client-Level Tool and the National Outcome Measures (NOMS) Client-Level Measures) that measure the outcomes of interest and subpopulations of focus: homelessness, housing, treatment history, readiness to change, trauma symptoms, housing and treatment choice, burden and satisfaction, military service, employment, and criminal justice involvement. Immediately following the SAMHSA-required administration of the GPRA/NOMS client-level tools, which are completed by enrolled accepted clients for each grantee project at baseline and 6-month follow-up, the paper and pencil Client Interview will be administered face-to-face by the GPRA/NOMS interviewer. Questions regarding perception of care and treatment coercion will be self-administered by participating clients and returned to the interviewer in a sealed envelope to be included in the full package mailed to the evaluation coordinating center by the interviewer. Client participation is voluntary; non-cash incentives will be given at baseline worth a $10 value and at 6-month follow-up worth a $25 value. Clients will be assigned unique identifiers by local projects; responses will be recorded on a fill-in-the-bubble answer sheet, mailed by the grantee project to the evaluation coordinating center, and scanned into a secure dataset. This process will eliminate the need for data entry, thereby reducing cost and potential for data entry error, and ensuring privacy for evaluation data.

The Stakeholder Survey will be conducted with GBHI/SSH program stakeholders via a web survey to assess the types of stakeholder partnerships involved in the GBHI/SSH programs and the barriers and strategies developed to overcome barriers to facilitate the implementation and sustainability of project activities under the GBHI/SSH programs. Each survey respondent will be issued a username and password to login to and complete the secure web-based survey. The web-based survey format will reduce burden on the respondent and minimize potential for measurement error.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Instrument/Activity	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response	Total burden hours per collection
Client Interview:					
Baseline Data Collection	5,885	1	5,885	.33	1,942
6-Month Follow-up Data Collection (80% of baseline)	4,708	1	4,708	.40	1,883
Stakeholder Survey	648	1	648	.28	181
TOTAL	11,241		11,241		4,006

Written comments and recommendations concerning the proposed information collection should be sent by April 14, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2014–05469 Filed 3–12–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement

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

ACTION: 30-day notice and request for comments; extension of an existing collection of information: 1651–0051.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in

the **Federal Register** (79 FR 404) on January 3, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 14, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1651–0051.

Form Number: None.

Abstract: In accordance with 19 CFR 146.4 and 146.25, foreign trade zone (FTZ) operators are required to account for zone merchandise admitted, stored, manipulated and removed from FTZs. FTZ operators must prepare a reconciliation report within 90 days after the end of the zone year for a spot check or audit by CBP. In addition, within 10 working days after the annual reconciliation, FTZ operators must submit to the CBP port director a letter signed by the operator certifying that the annual reconciliation has been prepared and is available for CBP review and is accurate. These requirements are authorized by Foreign Trade Zones Act, as amended (Title 19 U.S.C. 81a).

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from the addition of burden hours for the certification letter, and from updated data on the number of respondents and record keepers related to FTZ reconciliation. There is no change to the information collected or to the record keeping requirements.

Type of Review: Extension (with change).

Affected Public: Businesses or other for-profit institutions.

Record Keeping Requirements Under 19 CFR 146.4

Estimated Number of Respondents: 276.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 207.

Certification Letter Under 19 CFR 146.25

Estimated Number of Respondents: 276.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 91.

Dated: March 10, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–05490 Filed 3–12–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5758–N–04]

60-Day Notice of Proposed Information Collection: Rent Reform Demonstration (Task Order 1)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 12, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Rent Reform Demonstration.

Type of Request: New.

Description of the need for the information and proposed use: The Department is conducting this study under contract with MDRC and its subcontractors (Branch Associates, The Bronner Group, Decision Information Resources, Quadel Consulting Corporation, and the Urban Institute). The project is a random assignment trial of an alternative rent system. Families will be randomly assigned to either

participate in the new/alternative rent system or to continue in the current system. For voucher holders, outcomes of the alternative system are hypothesized to be increases in earnings, employment and job retention, among others. Random assignment will limit the extent to which selection bias drives observed results. The demonstration will document the progress of a group of housing voucher holders, who will be drawn from current residents. The intent is to gain an understanding of the impact of the alternative rent system on the families as well as the administrative burden on Public Housing Agencies (PHAs). PHAs currently participating in the Moving to Work (MtW) Demonstration are being recruited to participate in the demonstration.

Data collection will include the families that are part of the treatment and control groups, as well as PHA staff. Data for this evaluation will be gathered through a variety of methods including informational interviews, direct observation, surveys, and analysis of administrative records. The work covered under this information request is for interviews and the baseline survey. Work funded by subsequent task orders will be covered under a separate information collection request.

Respondents: 12,030.

This includes:

- Public Housing Authority Staff: Up to 30 (i.e., assuming up to 5 staff at up to 6 PHAs).
- Families with housing vouchers, remaining in the current rent system (control group): Up to 6,000.
- Families with housing vouchers, enrolled in the alternative rent system (treatment group): Up to 6,0.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Study information sheet.	12,000	Once	Once, in Year 1, at random assignment only.	Up to 10 minutes (or .17 hours).	*2,040 hours* (12,000 * .17).	[1] $7.25	$7,395 (6,000 employed sample members * $7.25 * .17 hours).
Baseline Information	12,000	Once	Once, in Year 1, at random assignment only.	30 minutes, on average (or .50 hours).	*6,000 hours (12,000 * .50).*	[2] 7.25	$21,750 (6,000 employed sample members * $7.25 * 0.5 hours).
Tracking survey sample (update contact information).	12,000	Two times	Once per year	30 minutes, on average (or .50 hours) or 1 hour over the tracking period.	*6,000 hours* (12,000 * .5/ year).	[3] 7.25	$21,750 (6,000 employed sample members * $7.25 * 0.5 hours).
Data on implementation of new rent model. Meet with HA staff (recertification, data, and management).	30 staff total (5 staff * 6 sites).	Four times	Up to four times over the course of the first year.	Incorporated into technical assistance and monitoring visits; 30–60 minutes.	*120 hours* (4 one-hour meetings * 30 staff).	24.86	[4] 2,983 (30 staff * $24.86 * 1 hour * 4 meetings).
Data on tenant experience of alternative rent model.	90 tenants (15 tenants * 6 sites).	Once	One time during the first year.	Incorporated into technical assistance and monitoring visits; 30–60 minutes.	*90 hours* (1 one-hour meeting * 90 tenants).	[5] 7.25	$326 (45 employed tenants * $7.25 * 1 hour).
Total	12,030				14,250		$54,204

[1] Potential respondents will range widely in employment position and earnings. For study participants, we have estimated the hourly wage at the federal minimum wage: $7.25 per hour. Based on other research, we expect about 50 percent of the participants to be employed at the time of study entry. Also, based on a recent report by the Center on Budget and Policy Priorities, some 55 percent of non-elderly, non-disabled households receiving voucher assistance reported earned income in 2010. The typical (median) annual earnings for these families were $15,600, only slightly more than the pay from full-time, year-round minimum-wage work. (*http://www.cbpp.org/cms/?fa=view&id=3634*). In the NYC Work Rewards study, based on 36-month survey data, the median wage for working participants was $10 an hour. Based on this, we assumed 6,000 (or 50% of the 12,000 projected sample) would be working at the federal minimum wage.

[2] Same note as 1.

[3] Same note as 1.

[4] For program staff, the estimate uses the median hourly wages of selected occupations (classified by Standard Occupational Classification (SOC) codes) was compared using Occupational Employment Statistics from the U.S. Department of Labor's Bureau of Labor Statistics. Potentially relevant occupations and their median hourly wages include:

[5] Same note as 1.

Occupation	SOC Code	Median hourly wage rate
Community and Social Service Specialist	21–1099	$19.74
Social/community Service Manager	11–9151	29.98

Source: Occupational Employment Statistics, May 2012, accessed online May 21st, 2013 at *http://www.bls.gov/oes/current/oes_stru.htm* To estimate cost burden to program staff respondents, we use an average of the occupations listed, or $24.86/hr.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 28, 2014.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2014–05401 Filed 3–12–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0008; EEEE500000 ET1SF0000.DAQ000; OMB Number 1014–NEW]

Information Collection Activities: Application for Permit To Drill (APD, Revised APD), Supplemental APD Information Sheet, and all Supporting Documentation; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for approval of the paperwork requirements in the regulations under Oil and Gas and Sulphur Operations in the Outer Continental Shelf pertaining to an Application for Permit to Drill (APD), a Revised APD, and all supporting documentation. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements. This ICR will separate out the hours and non-hour cost burdens associated with APDs from its currently approved IC into its own separate collection; it will also reflect more accurate burden estimates.

DATES: You must submit comments by April 14, 2014.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–NEW). Please provide a copy of your comments to Bureau of Safety and Environmental Enforcement (BSEE) by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0008 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email cheryl.blundon@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; BSEE; Regulations and Standards Branch; ATTN: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Application for Permit to Drill (APD, Revised APD), Supplemental APD Information Sheet, and all supporting documentation.

Form(s): BSEE–0123 and –0123S.

OMB Control Number: 1014–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the Outer Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

In addition to the general authority of OCSLA, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. The Secretary has delegated some of the authority under FOGRMA to BSEE.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, the BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Applications for Permit to Drill (APDs) are subject to cost recovery and BSEE regulations specify a service fee for this request.

This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR part 250 stipulate the various requirements that must be submitted with an APD, Revised APD, and the supplemental APD information sheet. The forms and the numerous submittals that are included and/or attached to the forms are the subject of this collection. Currently, this information is collected under 30 CFR part 250, Subpart D, 1014–0018 (216,211 hour burdens/$2,225,286 non-hour cost burdens; expiration 10/21/2014); but this request will separate out the hours and non-hour cost burdens associated with APDs into its own separate collection so that both industry and BSEE have a better understanding of the complexities associated with all the information that is submitted with these forms throughout the various subparts; and will reflect more accurate burden estimates.

This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

This ICR includes forms, APD, BSEE–0123 and Supplemental APD Information Sheet, BSEE–0123s. In this submission, we have included a

certification statement on both forms to state that false submissions are subject to criminal penalties.

Also, we clarified some sections of Form BSEE–0123 (Form BSEE–0123s remains the same). This poses minor edits and they are as follows:

Question #17—facility name was added;

Question #25—revised the citations for accuracy;

Question #33—added a new question relating to digital BOP testing.

Application for Permit to Drill, BSEE–0123 and Supplemental APD Information Sheet, BSEE–0123S.

The BSEE uses the information from these forms to determine the conditions of a drilling site to avoid hazards inherent in drilling operations. Specifically, we use the information to evaluate the adequacy of a lessee's or operator's plan and equipment for drilling, sidetracking, or deepening operations. This includes the adequacy of the proposed casing design, casing setting depths, drilling fluid (mud) programs, cementing programs, and blowout preventer (BOP) systems to ascertain that the proposed operations will be conducted in an operationally safe manner that provides adequate protection for the environment. BSEE also reviews the information to ensure conformance with specific provisions of the lease. In addition, except for proprietary data, BSEE is required by the OCSLA to make available to the public certain information submitted on Forms BSEE–0123 and –0123S.

The forms use and information consist of the following:

BSEE–0123

Heading: BSEE uses the information to identify the type of proposed drilling activity for which approval is requested.

Well at Total Depth/Surface: Information utilized to identify the location (area, block, lease, latitude and longitude) of the proposed drilling activity.

Significant Markers Anticipated: Identification of significant geologic formations, structures and/or horizons that the lessee or operator expects to encounter. This information, in conjunction with seismic data, is needed to correlate with other wells drilled in the area to assess the risks and hazards inherent in drilling operations.

Question/Information: The information is used to ascertain the adequacy of the drilling fluids (mud) program to ensure control of the well, the adequacy of the surface casing compliance with EPA offshore pollutant discharge requirements and the shut in of adjacent wells to ensure safety while moving a rig on and off a drilling location, as well that the worst case discharge scenario information reflects the well and is updated if applicable. This information is also provided in the course of electronically requesting approval of drilling operations via eWell.

BSEE–0123S

Heading: BSEE uses this information to identify the lease operator, rig name, rig elevation, water depth, type well (exploratory, development), and the presence of H2S and other data which is needed to assess operational risks and safety.

Well Design Information: This engineering data identifies casing size, pressure rating, setting depth and current volume, hole size, mud weight, BOP and well bore designs, formation and BOP test data, and other criteria. The information is utilized by BSEE engineers to verify operational safety and ensure well control to prevent blowouts and other hazards to personnel and the environment. This form accommodates requested data collection for successive sections of the borehole as drilling proceeds toward total depth below each intermediate casing point.

Regulations implementing these responsibilities are among those delegated to BSEE. Responses are mandatory or are required to obtain or retain a benefit. No questions of a sensitive nature are asked. The BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* 30 CFR Part 252, *OCS Oil and Gas Information Program.*

The information collected is used in our efforts to ensure safe drilling operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The drilling unit is fit for the intended purpose; the lessee or operator will not encounter geologic conditions that present a hazard to operations; equipment is maintained in a state of readiness and meets safety standards; each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; compliance with safety standards; and the current regulations will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

Frequency: On occasion and as required by regulations.

Description of Respondents: Potential respondents comprise OCS Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 20,312 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

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[**NOTE:** In the Burden Table, a Revised APD hour burden is preceded by the letter R.]

BURDEN TABLE

Citation 30 CFR 250; Application for Permit to Drill (APD)	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burden		
Subparts A, D, E, H, P	Apply for permit to drill, sidetrack, bypass, or deepen a well submitted via Forms BSEE-0123 (APD) and BSEE-0123S (Supplemental APD). (This burden represents only the filling out of the forms, the requirements are listed separately below.)	1	408 applications	408
		$2,113 fee x 408 = $862,104		
Subparts D and E	Obtain approval to revise your drilling plan or change major drilling equipment by submitting a Revised APD and Supplemental APD [no cost recovery fee for Revised APDs]. (This burden represents only the filling out of the forms, the requirements are listed separately below).	1	662 submittals	662
		Subtotal	**1,070 responses**	**1,070 hours**
			$862,104 non-hour cost burdens	
Subpart A				
125	Submit evidence of your fee for services receipt.	Exempt under 5 CFR 1320.3(h)(1).		0
197	Written confidentiality agreement.	Exempt under 5 CFR 1320.5(d)(2).		0
Subpart D				
409	Request departure approval from the drilling requirements specified in this subpart; identify and discuss.	1	367 approvals	367
410(d)	Submit to the District Manager: An original and two complete copies of APD and Supplemental APD; separate public information copy of forms per § 250.186.	0.5	380 submittals	190
		R- 0.5	380 submittals	190
411; 412	Submit plat showing location of the proposed well and all the plat requirements associated with this section.	2	380 submittals	760
411; 413; 414; 415;	Submit design criteria used and all description requirements; drilling prognosis with description of the procedures you will follow; and casing and cementing program requirements.	11.5	707 submittals	8,131
411; 416	Submit diverter and BOP systems descriptions and all the regulatory requirements associated with this section.	3	380 submittals	1,140
411; 417	Provide information for using a MODU and all the regulatory requirements associated with this section.	10	682 submittals	6,820

Citation 30 CFR 250; Application for Permit to Drill (APD)	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burden		
411; 418	Additional information required when providing an APD include, but not limited to, rated capacities of drilling rig and equipment if not already on file; quantities of fluids, including weight materials; directional plot; H2S; welding plan; and information we may require per requirements, etc.	19	380 submittals	7,220
420(a)(6)	(i) Include signed registered professional engineer certification and related information.	3	1,034 certification	3,102
423(b)(3)	Submit for approval casing pressure test procedures and criteria. On casing seal assembly ensure proper installation of casing or line (subsea BOP's only).	3	527 procedures & criteria	1,581
423(c)(3)	Submit test procedures and criteria for a successful negative pressure test for approval. If any change, submit changes for approval.	2.5	355 submittals	888
		R-4	1 change	4
432	Request departure from diverter requirements; with discussion and receive approval.	5	53 requests	265
447(c)	Indicate which casing strings and liners meet the criteria of this section.	1	355 casing / liner info	355
448(b)	Request approval of test pressures (RAM BOPs).	2	353 requests	706
448(c)	Request approval of pressure test (annular BOPs).	1	380 requests	380
449(j)	Submit test procedures, including how you will test each ROV intervention function, for approval (subsea BOPs only).	2	507 submittals	1,014
449(k)	You must submit test procedures (autoshear and deadman systems) for approval. Include documentation of the controls / circuitry system used for each test; describe how the ROV will be utilized during this operation.	2.5	507 submittals	1,268
456(j)	Request approval to displace kill-weight fluid; include reasons why along with step-by-step procedures.	4.5	518 approval requests	2,331
460(a)	Include your projected plans if well testing along with the required information.	12	2 plans	24
490(c)(2 thru 4)	(2) Request to classify an area for the presence of H2S.	3	91 requests	273
	(3) Support request with available information such as G&G data, well logs, formation tests, cores and analysis of formation fluids.	3	73 submittals	219
	(4) Submit a request for reclassification of a zone when a different classification is needed.	1	4 requests	4
Alaska Region:	Due to the difficulties of drilling in Alaska, along with the shortened time window allowed	2,800	1 request	2,800

Citation 30 CFR 250; Application for Permit to Drill (APD)	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burden		
410; 412 thru 418; 420; 442; 444; 449; 456;	for drilling, Alaska hours are done here as stand alone requirement. Also, note that these specific hours are based on the first APD in Alaska in more than 10 years.			
		Subpart D subtotal	**8,417 responses**	**40,032 hours**
		Subpart E		
513	(a) Obtain approval to begin well completion operations. If completion is planned and the data are available you may submit on forms.	3	288 requests	864
		R-6	1 request	6
	b) Submit description of well-completion, schematics, logs, any H2S; on form.	16.5	295 submittals	4,868
		R-26	1 submittal	26
516(a)	Submit well-control procedure indicating how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.	3	295 procedures	885
		Subpart E subtotal	**880 responses**	**6,649 hours**
		Subpart H		
807(a)	Submit detailed information that demonstrates the SSSVs and related equipment are capable of performing in HPHT.	3.75	1 submittal	4
		Subpart H subtotal	**1 response**	**4 hours**
		Subpart P		
Note that for Sulphur Operations, while there may be 45 burden hours listed, we have not had any sulphur leases for numerous years, therefore, we have submitted minimal burden.				
1605(b)(3)	Submit information on the fitness of the drilling unit.	4	1 submittal	4
1617	(a) Request approval before drilling a well.	1	1 submittal	1
	(b) Include rated capacities of the proposed drilling unit and of major drilling equipment.	3	1 submittal	3
	(c) Include a fully completed Form BSEE-0123 and the requirements of this section.	34	1 submittal	34
1622(b)	Submit description of well-completion or workover procedures, schematic, and if H2S is present.	3	1 submittal	3
		Subpart P subtotal	**5 responses**	**45 hours**
	Total Burden		**10,373 Responses**	**47,800 Hours**
			$862,104 Non Hour Cost Burden	

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Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden associated with this collection of information. When respondents submit an APD (BSEE–0123), they submit a $2,113 fee for initial applications only (there is no fee for a revision). We have

not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on December 3, 2013, we published a **Federal Register** notice (78 FR 72688) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to the **Federal Register** or any unsolicited comments.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 19, 2014.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2014–05550 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0009; OMB Control Number 1014–NEW; 14XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Application for Permit To Modify (APM) and Supporting Documentation; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for approval of the paperwork requirements in the regulations under Oil and Gas and Sulphur Operations in the Outer Continental Shelf pertaining to an Application for Permit to Modify (APM) and supporting documentation. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements. This ICR will separate out the hours and non-hour cost burdens associated with APMs from its currently approved IC into its own separate collection; it will also reflect more accurate burden estimates.

DATES: You must submit comments by April 14, 2014.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–NEW). Please provide a copy of your comments to Bureau of Safety and Environmental Enforcement (BSEE) by any of the means below.

- Electronically: go to *http://www.regulations.gov*. In the Search box, enter BSEE–2013–0009 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov*, fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; BSEE; Regulations and Standards Branch; ATTN: Cheryl Blundon; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–NEW in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Application for Permit to Modify (APM) and all supporting documentation.

Form(s): BSEE–0124.

OMB Control Number: 1014—NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the Outer Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

In addition to the general authority of OCSLA, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to

permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. The Secretary has delegated some of the authority under FOGRMA to BSEE.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, the Bureau of Safety and Environmental Enforcement (BSEE) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. APMs are subject to cost recovery and BSEE regulations specify a service fee for this request.

These authorities and responsibilities are among those delegated to the BSEE. The regulations at 30 CFR part 250 stipulate the various requirements that must be submitted with an APM. The form and the numerous submittals that are included and/or attached to the form are the subject of this collection. Currently, this information is collected under 30 CFR part 250, Subpart D, 1014–0018 (216,211 hour burdens/ $2,225,286 non-hour cost burdens; expiration 10/21/2014); but this request will separate out the hours and non-hour cost burdens associated with APMs into its own separate collection so that both industry and BSEE have a better understanding of the complexities associated with all the information that is submitted with this form; and will reflect more accurate burden estimates. Once OMB approves this new collection, the hour and non-hour cost burdens associated with APMs will be removed from the IC 1014–0018.

This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations

The current regulations specify the use of form BSEE–0124 (Application for Permit to Modify). We have included a certification statement on the form, to state that false submissions are subject to criminal penalties. Also, we clarified a section of the form by updating the regulatory citations listed in Question #18.

Regulations implementing these responsibilities are delegated to BSEE. Responses are mandatory or are required to obtain or retain a benefit. No questions of a sensitive nature are asked. The BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* 30 CFR Part 252, *OCS Oil and Gas Information Program.*

The BSEE uses the information to ensure safe well completion, workover, and decommissioning operations and to protect the human, marine, and coastal environment. Among other things, BSEE specifically uses the information to ensure: The well completion, workover, and decommissioning unit is fit for the intended purpose; equipment is maintained in a state of readiness and meets safety standards; each well completion, workover, and decommissioning crew is properly trained and able to promptly perform well-control activities at any time during well operations; and compliance with safety standards. The current regulations provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether the operations have encountered hydrocarbons or H2S and to ensure that H2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H2S and zones where the presence of H2S is unknown.

We use the information to determine the conditions of the site to avoid hazards inherent in well completions, workovers, and decommissioning operations. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information that is submitted.

The information on the APM form (BSEE–0124) is used to evaluate and approve the adequacy of the equipment, materials, and/or procedures that the lessee or operator plans to use during drilling plan modifications, changes in major drilling equipment, and plugging back. In addition, except for proprietary data, BSEE is required by the OCS Lands Act to make available to the public certain information submitted on BSEE–0124. The information on the form is as follows:

Heading: Identify the well name, lease operator, type of revision and timing of the proposed modifications.

Well at Total Depth/Surface: Identify the unique location (area, block and lease of the proposed activity).

Proposed or Completed Work: Information identifying the specific activity, revision or modification for which approval is requested. This includes specific identification of equipment, engineering, and pressure test data needed by BSEE to ascertain that operations will be conducted in a manner that ensures the safety of personnel and protection of the environment.

Question Information: Responses to questions (a) through (h) serve to ascertain compliance with applicable BSEE regulations and requirements and adherence to good operating practices.

Frequency: On occasion and as required by regulations.

Description of Respondents: Potential respondents comprise OCS Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 9,770 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

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Citation 30 CFR 250 APM's	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
Subparts D, E, F, H, P, Q	Submit APM plans (BSEE-0124). (This burden represents only the filling out of the form, the requirements are listed separately below).	1	2,893 applications	2,893
		2,893 applications x $125 application fee = $361,625		
Subparts D, E, F, H, P, Q	Submit Revised APM plans (BSEE-0124). (This burden represents only the filling out of the form, the requirements are listed separately below) [no fee charged].	1	1,551 applications	1,551
		Subtotal	**4,444 responses**	**4,444 hour burdens**
			$361,625 non-hour cost burdens	
Subpart A				
125	Submit evidence of your fee for services receipt.	Exempt under 5 CFR 1320.3(h)(1).		0
197	Written confidentiality agreement.	Exempt under 5 CFR 1320.5(d)(2).		0
Subpart D				
423(c)(3); 449(j); 449(k); 460(a); 465	There are some regulatory requirements that give respondents the option of submitting with their APD or APM; industry advised us that when it comes to this particular subpart, they submit a Revised APD. There are no APM submittals under this subpart.	Burden covered under 30 CFR 250, Subpart D - 1014-0018.		0
Subpart E				
513(a)	Obtain written approval for well-completion operations. Submit the following information, which includes but not limited to: request approval for the completion or if the completion objective or plans have changed; description of the well-completion procedures; statement of the expected surface pressure, and type and weight of completion fluids; schematic drawing; a partial electric log; H2S presence or if unknown.	1	181 submittals	181
514(d)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	40 mins.	175 submittals	117
515	(a thru c) For completion operations, include the following BOP descriptions: components, pressure ratings and test pressures; schematic; independent third-party verification and supporting documentation about blind-shear rams.	30 mins.	181 submittals	91
	(d) When you use a subsea BOP stack, submit independent third-party verification about BOP stack requirements.	15 mins.	17 submittals	4

Citation 30 CFR 250 APM's	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
	(e)(1), (2) Independent third-party qualifications and evidence/ supporting documentation demonstrating their abilities.	20 mins.	192 submittals	64
516(a)	Submit a well-control procedure that indicates how the annular preventer will be utilized, and the pressure limitations that will be applied during each mode of pressure control.	15 mins.	181 submittals	45
517(d)	(8) Submit for approval test procedures, including how you will test each ROV function.	20 mins.	17 submittals	6
	(9)(i) Submit for approval test [autoshear and deadman] procedures. Include all required documentation.	15 mins.	17 submittals	4
526(a)	Submit a notification of corrective action of the diagnostic test.	15 mins.	68 notifications	17
	Subtotal of Subpart E		**1,046 responses**	**529 hour burdens**
	Subpart F			
613	(a), (b) Request approval to begin other than normal workover, which includes description of procedures, changes in equipment, schematic, info about H2S, etc..	30 mins.	802 requests	401
	(c) If completing to a new zone, submit reason for abandonment and statement of anticipated pressure data for new zone.	10 mins.	205 submittal	34
	(d) Within 30 days after completing the well-workover operation, except routine operations, submit showing the work as performed.	15 mins.	762 submittals	191
614(d)	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	40 mins.	51 requests	34
615	(a thru c) For workover operations, include the following BOP descriptions with your submittal: components, pressure ratings and test pressures; schematic; independent third-party verification and supporting documentation about blind-shear rams.	30 mins.	629 submittals	315
	(d) When you use a subsea BOP stack, independent third-party verification about BOP stack requirements.	15 mins.	51 verifications	13
	(e)(1), (2) Independent third-party qualifications and evidence/ supporting documentation demonstrating their abilities.	20 mins.	576 submittals	192
616(a)	Submit well-workover procedures how the annular preventer will be utilized and the pressure limitations that will be applied during each mode of pressure control.	20 mins.	629 procedures	210
616(f)(4)	Obtain approval to conduct operations without	15	273	68

Citation 30 CFR 250 APM's	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
	downhole check valves, describe alternate procedures and equipment to conduct operations without downhole check valves.	mins.	approvals	
617(d), (h)(1+2)	Obtain approval: stump test and include procedures; test procedures, including how you will test each ROV function and autoshear deadman; include required documentation; and utilization description.	40 mins.	51 approvals	34
	Subtotal of Subpart F		**4,029 responses**	**1,492 hour burdens**
	Subpart H			
801(h)	Request approval to temporarily remove safety device for non-routine operations.	10 mins.	55 approvals	9
807(a)	Submit detailed information that demonstrates the SSSVs and related equipment capabilities re HPHT; include discussions of design verification analysis and validation, functional listing process, and procedures used; explain fit-for-service.	40 mins.	15 submittals	10
	Subtotal of Subpart H		**70 responses**	**19 hour burdens**
	Subpart P			
It needs to be noted that for Sulphur Operations, while there may be burden hours listed that are associated with some form of an APM submittal, we have not had any sulphur leases for numerous years, therefore, we are submitting minimal burden.				
1618(a), (b)	Request approval / submit requests for changes in plans, changes in major drilling equipment, proposals to deepen, sidetrack, complete, workover, or plug back a well, or engage in similar activities; include but not limited to, detailed statement of proposed work changed; present state of well; after completion, a detailed report of all the work done and results.	30 mins.	1 plan	1
1619(b)	Submit duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition.	10 mins.	1 submittal	1
1622(a), (b)	Obtain written approval to begin operations; include description of procedures followed; changes to existing equipment, schematic drawing; zones info re H2S, etc.	20 mins.	1 approval	1
1622(c)	(2) Submit results of any well tests and a new schematic of the well if any subsurface equipment has been changed.	10 mins.	1 submittal	1
	Subtotal of Subpart P		**4 responses**	**4 hour burdens**
	Subpart Q			
1706(a)	Request approval of well abandonment operations.	20 mins.	710 requests	237
1706(f)	(4) Request approval to conduct operations without downhole check valves, describe	15 mins.	500 requests	125

Citation 30 CFR 250 APM's	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
	alternate procedures and equipment.			
1707(d)	Submit and obtain approval of plan describing the stump test procedures.	10 mins.	50 submittals	8
1707(h)	(1) Submit test procedures, including how you will test each ROV function for approval; include documentation and utilization description.	30 mins.	50 submittals	25
1709	Obtain approval to displace kill weight fluid with detailed step-by-step written procedures that include, but are not limited to: number of barriers, tests, BOP procedures, fluid volumes entering and leaving wellbore procedures.	30 mins.	50 submittals	25
1712; 1704(g)	(a), (b), (d), (f)(9 + 11), (g) Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to, reason plugging well, with relevant information; well test and pressure data; type and weight of well control fluid; a schematic listing mud and cement properties; plus testing plans. Submit Certification by a Registered Professional Engineer of the well abandonment design and procedures; certify the design	40 mins.	244 certifications	163
	(c), (e), (f) Obtain and receive approval before permanently plugging a well or zone. Include in request, but not limited to max surface pressure and determination; description of work; well depth, perforated intervals; casing and tubing depths/details, plus locations, types, lengths, etc.	1.5	444 submittals	666
1717; 1704(g)	Submit with a final well schematic, description, nature and quantities of material used; relating to casing string - description of methods used, size and amount of casing and depth.	1	434 submittals	434
1721(a), (g), (h); 1704(g)	Submit the applicable information required to temporarily abandon a well for approval; after temporarily plugging a well, submit well schematic, description of remaining subsea wellheads, casing stubs, mudline suspension equipment and required information of this section; submit certification by a Registered Professional Engineer of the well abandonment design and procedures; certify design.	70 mins.	1,296 submittals	1,512
1722(a), (d); 1704(g)	Request approval to install a subsea protective device.	30 mins.	15 requests / submittals	8
	Submit a report including dates of trawling test and vessel used; plat showing trawl lines; description of operation and nets used; seafloor penetration depth; summary of results listed in this section; letter signed by witness of test.	1.5		23
1723(b); 1704(g)	Submit a request to perform work to remove casing stub, mudline equipment, and/or subsea protective covering.	20 mins.	150 requests	50

Citation 30 CFR 250 APM's	Reporting or Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours (Rounded)
		Non-Hour Cost Burdens		
1743(a); 1704(g)	Submit signed certification; date of verification work and vessel; area surveyed; method used; results of survey including debris or statement that no objects were recover; a post-trawling plot or map showing area.	1.25	5 certifications	6
Subtotal of Subpart Q			**3,948 responses**	**3,282 hour burdens**
Total Burden			**13,524 annual responses**	**9,770 annual burden hours**
			$361,625 non-hour cost burdens	

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Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden associated with the collection of information for a total of $361,625. The service fee of $125 is required to recover the Federal Government's processing costs of the APM. We have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,)* provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on December 3, 2013, we published a **Federal Register** notice (78 FR 72693) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received one set of comments in response to the **Federal Register** notice. One comment was about how BSEE included a certification statement on the form that false submissions are subject to criminal penalties.'' The response to the commenters' input is as follows: The certification statement we added to the form is a standard statement on many government forms. The statement is intended to remind submitters of the penalties for false statements. Anyone who submits a false statement to the government may be subject to civil and criminal penalties even if the statement does not appear on a form. Inclusion of the statement serves to ensure submitters are aware of applicable law. Another comment was the addition of Question #8b—Well Status. Due to the comment, it came to light that industry does not have to input that information on the form—once the form starts to be filled out, the well status information is populated automatically; therefore, we removed Question #8b. The last comment pertains to the estimated reporting and recordkeeping non-hour cost burden. The commenter believes that the $361,625 cost is for additional time and effort to file the form with the suggested changes. That is not the case. BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large (see the Independent Offices Appropriations Act paragraph under the Abstract). APMs are subject to a $125 cost recovery and BSEE regulations specify a service fee for this request under 30 CFR 250.125.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 19, 2014.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2014–05551 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–NCPTT–15151; PPWOCRADS2; PCU00PT14.GT0000]

Preservation Technology and Training Board: Meeting Notice

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16) that the Preservation Technology

and Training Board of the National Center for Preservation Technology and Training (NCPTT) will meet on March 31, 2014, and April 1, 2014.

DATES: The Board will meet on the following dates:

Monday, March 31, 2014, 9:00 a.m. to 5:00 p.m. (CDT)

Tuesday, April 1, 2014, 9:00 a.m. to 12:00 p.m. (CDT)

ADDRESSES: The Board will meet at the NCPTT Headquarters, 645 University Parkway, Natchitoches, Louisiana, 71457.

FOR FURTHER INFORMATION CONTACT: Persons wishing more information concerning this meeting, or who wish to submit written statements, may contact: Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, 645 University Parkway, Natchitoches, LA 71457, by telephone (318) 356–7444. In addition to U.S. mail or commercial delivery, written comments may be sent by fax to Mr. Cordell at (318) 356–9119, or submitted electronically on the center Web site: *ncptt@nps.gov*.

SUPPLEMENTARY INFORMATION: The Board was established to provide leadership, policy advice, and professional oversight to the NCPTT in compliance with Section 404 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470x–2(e)).

The meeting agenda will include:

1. Review and Comment on NCPTT FY2013 Accomplishments, and Operational Priorities for FY 2014
2. FY 2014 and FY 2015 NCPTT Budget and Initiatives
3. Recent Research
4. Training Programs

Minutes of the meeting will be available for public inspection no later than 90 days after the meeting at the Office of the Executive Director, NCPTT, National Park Service, 645 University Parkway, Natchitoches, LA 71457, by telephone (318) 356–7444.

The Board meeting is open to the public. Facilities and space for accommodating members of the public are limited; however, visitors will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning any of the matters to be discussed by the Board. Before including your address, telephone 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 may 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: March 7, 2014.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014–05492 Filed 3–12–14; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–847]

Certain Mobile Phones and Tablet Computers, and Components Thereof; Notice of the Commission's Determination To Grant the Parties' Joint Motion To Terminate the Investigation Based on a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the parties' joint motion to terminate the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. 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 (*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 June 8, 2012, based on a complaint filed by Nokia Corp., Nokia Inc., and Intellisync Corp. (collectively, ''Nokia''). 77 FR 34063–64. The Commission's notice of investigation named as respondents HTC Corporation; HTC America, Inc. (together, ''HTC''); and Exedea, Inc. (''Exedea''). *Id.* at 34064. On June 19, 2012, counsel for Exedea announced that Exedea had dissolved as a corporate entity. The complaint and notice of investigation sent to Exedea were returned as undeliverable, and no further action was taken to serve Exedea. On July 16, 2012, Google Inc. (''Google'') moved to intervene in this investigation with respect to certain patents, and was granted intervenor status on August 7, 2012. The Office of Unfair Import Investigations did not participate in this investigation.

Originally, Nokia asserted numerous claims from nine patents against HTC. Throughout the course of the investigation, several IDs partially terminated the investigation with respect to various patents and claims. *See* Order No. 7 (Feb. 7, 2013) (terminating the investigation with respect to U.S. Patent No. 7,366,529 because the patent was covered by an arbitration agreement), *not reviewed* (Mar. 11, 2013); Order No. 10 (Apr. 12, 2013) (terminating the investigation with respect to U.S. Patent Nos. 7,106,293; 6,141,664; and 7,209,911 based on Nokia's motion to withdraw the patents), *not reviewed* (Apr. 30, 2013); Order No. 14 (May 14, 2013) (terminating the investigation with respect to U.S. Patent No. 6,728,530 based on Nokia's motion to withdraw the patent), *not reviewed* (May 29, 2013); Order No. 33 (June 13, 2013) (terminating the investigation with respect to U.S. Patent No. 5,570,369 based on Nokia's motion to withdraw the patent), *not reviewed* (July 12, 2013). By the time of the final ID, Nokia asserted only claim 1 of U.S. Patent No. 5,884,190; claims 6, 8, 10, and 11 of U.S. Patent No. 6,393,260; and claims 2, 18, 19, 21, and 23 of U.S. Patent No. 7,415,247.

On September 23, 2013, the presiding ALJ issued his final ID, finding a violation of section 337. On October 23, 2013, HTC filed a petition for review of the ID. On December 9, 2013, the Commission determined to review the final ID in part. 78 FR 75942–43 (Dec. 13, 2013).

On February 7, 2014, Nokia and HTC jointly moved to terminate the investigation based on a settlement agreement (''Motion''). The Motion contains two confidential settlement document attachments, and states there are no other agreements, written or oral, express or implied, between Nokia and HTC regarding the subject matter of this Investigation. The Motion further states that the termination of this investigation pursuant to a settlement agreement poses no threat to the public interest

and that it is in the interest of the public and administrative economy to grant the Motion. The Motion also requests that the Commission limit service of the confidential settlement documents to the settling parties because the disclosure of the documents will prejudice Nokia's ongoing discussions with Google and its customers.

On February 12, 2014, Google stated that it has no position on the Motion because none of the patents upon which it had intervened were currently before the Commission.

The Commission finds that the Motion complies with the Commission Rules, and there is no evidence that the proposed settlement will be contrary to the public interest. The Commission therefore determines to grant the Motion, and to terminate the investigation. The Commission also finds that good cause exists to limit the service of the confidential settlement documents to the settling parties, and grants the request to limit service of the confidential settlement documents to the settling parties.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: March 7, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–05468 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *A. Derek Hoyte, et al.,* Case No. C10–2044BHS, was lodged with the United States District Court for the Western District of Washington on February 28, 2014.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants Derek A. Hoyte, Columbia Pacific Enterprises, Inc., and Columbia Crest Partners LLC, in part pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to the Clean Water Act aspects of this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Brian C. Kipnis, Assistant United States Attorney, Office of the United States Attorney for the Western District of Washington, 5220 United States Courthouse, 700 Stewart Street, Seattle, Washington 98101 and refer to *United States* v. *Derek A. Hoyte, et al.,* Case No. C10–2044BHS, U.S.A.O. #2010V00667.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Washington in Seattle, located at 700 Stewart Street, Suite 2310, Seattle, Washington 98101, or in Tacoma, located at 1717 Pacific Avenue, Room 3100, Tacoma, Washington 98402. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2014–05439 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al., v. US Airways Group, Inc., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the Response of the United States to Public Comments on the proposed Final Judgment in *United States, et al.,* v. *US Airways Group, Inc., et al.,* Civil Action No. 1:13–CV–1236–CKK (D.D.C. 2013).

Copies of the 14 Public Comments and the Response of the United States to Public Comments are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481); on the Department of Justice's Web site at *http://www.justice.gov/atr/cases/usairways/index.html;* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001. Copies of any of these materials may also be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al. Plaintiffs, v. US AIRWAYS GROUP, INC. and AMR CORPORATION DEFENDANTS.

Case No. 1:13–cv–1236 (CKK)

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENTS ON THE PROPOSED FINAL JUDGMENT

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INTRODUCTION

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States' response to these comments. For the reasons discussed below, the United States continues to believe that the remedy it obtained from Defendants will address the competitive harm alleged in this action and is plainly in the public interest. Accordingly, the United States proposes no modifications to the proposed Final Judgment.

The remedy is a major victory for American consumers. It will enable Low Cost Carriers (''LCCs'') to fly millions of new passengers per year to destinations throughout the country. It fully addresses the harm that would have resulted from New American's control of nearly 70% of the limited takeoff and landing slots at Ronald Reagan Washington National Airport (''Reagan National''). It enables LCCs to acquire otherwise unobtainable slots and gates at Reagan National (Southwest Airlines, JetBlue Airways and Virgin America) and LaGuardia Airport (Southwest and Virgin America), and to obtain gates at other busy airports around the country such as Los Angeles International Airport, Chicago O'Hare International Airport, and Dallas Love Field. And by introducing new low-cost capacity and service on numerous routes around the country, it enhances the ability of LCCs to thwart industry coordination among the legacy carriers. The competitive significance of the remedy is reflected in the value being paid for the divested Reagan National and LaGuardia slots—over $425 million—which is unprecedented in the airline industry and among the most substantial merger remedies in any industry.

The United States has received a total of fourteen comments reflecting divergent views.[1] One suggests that the lawsuit should not have been filed in the first place. Others assert that the settlement does not go far enough to remedy potential harm from the merger, and many raise issues that are outside the scope of an antitrust review. After careful consideration of these comments, the United States has concluded that nothing in them casts doubt on the very substantial public interest that will be achieved by the proposed remedy.

The United States has published the comments and this response on the Antitrust Division Web site and is submitting to the **Federal Register** this response and the Web site address at which the comments may be viewed and downloaded, as set forth in the Court's Orders dated November 20, 2013 (Docket No. 154) and February 27, 2014 (Docket No. 158).[2] Following **Federal Register** publication, the United States will move the Court, pursuant to 15 U.S.C. § 16(b)–(h), to enter the proposed Final Judgment.

I. Procedural History

On August 13, 2013, the United States, joined by several states and the District of Columbia (''Plaintiff States''), filed a Complaint in this matter alleging that the proposed merger of US Airways Group, Inc. (''US Airways'') and AMR Corporation, the parent of American Airlines, Inc., (''American''), creating New American, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

In the three months following the filing of the Complaint, Plaintiffs and Defendants actively prepared for trial and accomplished a substantial amount of pre-trial groundwork, including completion of fact discovery. Trial in this matter was scheduled to begin on November 25, 2013.

While the parties continued to litigate, they engaged in settlement discussions that culminated in a consensual resolution of the matter. On November 12, 2013, the United States filed the proposed Final Judgment (Docket No. 147–2), a Competitive Impact Statement (''CIS,'' Docket No. 148), and an Asset Preservation Order and Stipulation signed by the parties consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA (Docket No. 147–1).

As Defendant AMR Corporation was in bankruptcy, the settlement required approval by the bankruptcy court. On November 27, 2013, the United States Bankruptcy Court for the Southern District of New York entered an order finding that the settlement satisfied the requirements for approval under the Bankruptcy Code, granted AMR's motion to consummate the merger, and denied a request for a temporary restraining order filed by a private plaintiff seeking to enjoin the merger on antitrust grounds.[3] AMR exited bankruptcy protection, and the merger closed on December 9, 2013. The Bankruptcy Court has retained jurisdiction to continue to hear the private case.[4]

Pursuant to the APPA and this Court's November 20, 2013 Order, the United States published the proposed Final Judgment and CIS in the **Federal Register** on November 27, 2013, *see* 78 Fed. Reg. 71377, and caused summaries

[1] In addition, fifteen individuals sent emails about competition concerns relating to the settlement to the United States using various channels outside of the designated procedures for submitting Tunney Act comments. The United States has reviewed all of these emails and none of them raise any issue not already addressed in this Response to Comments. Although these emails are not formal Tunney Act comments, we are nevertheless publishing them in this case but redacting all identifying information about the authors. If the Court requests, the United States will provide unredacted copies under seal.

[2] This Response and all of the public comments may be found on the Antitrust Division's Web site at *http://www.justice.gov/atr/cases/usairways/index.html.*

[3] *See* Order Pursuant to Bankruptcy Rule 9019(a) Approving Settlement Between Debtors, US Airways, Inc., and United States Department of Justice, *In re AMR Corp.,* (Bankr. S.D.N.Y. 2013), ECF No. 11321, *available at http://www.amrcaseinfo.com/pdflib/11321_15463.pdf,* and accompanying Memorandum, *available at http://www.amrcaseinfo.com/pdflib/72_01392.pdf.*

[4] *Fjord* v. *AMR Corp.,* (*In re AMR Corp.*) Adv. Pr. No. 13–01392 (Bankr. S.D.N.Y.), *docket available at http://www.amrcaseinfo.com/adversary_01392.php.* (The lead attorney in the private case, Joseph Alioto, submitted a Tunney Act comment in this proceeding.)

of the terms of the proposed Final Judgment and CIS, together with directions for submission of written comments relating to the proposed Final Judgment, to be published in the *Washington Post, Dallas Morning News,* and *Arizona Republic* for seven days, beginning on November 25, 2013 and ending on December 9, 2013. Defendants filed the statements required by 15 U.S.C. § 16(g) on December 9, 2013. The 60-day public comment period ended on February 7, 2014. The United States received fourteen comments, as described below and attached hereto.

II. The Complaint and the Proposed Settlement

A. The Complaint

The Complaint alleged that the likely effect of the merger of US Airways and American, which would reduce the number of major domestic airlines from five to four and the number of ''legacy airlines'' [5] from four to three, would be to lessen competition substantially in the sale of scheduled air passenger service in city pair markets throughout the United States, and in the market for takeoff and landing authorizations (''slots'') at Reagan National.[6]

One of the United States' concerns was that the merger would make it easier for the remaining legacy carriers—New American, United and Delta—to cooperate, rather than compete, on price and service. Amended Complaint (''Am. Compl.,'' Docket No. 73) ¶¶ 41–81. Such coordinated conduct deprives consumers of the benefits of full and vigorous competition.[7]

As explained in the Complaint, the structure of the airline industry was already conducive to coordinated behavior among the legacy carriers. *Id.,* ¶¶ 41–47. For example, on routes where one legacy carrier offers nonstop service, the other legacies generally ''respect'' (a term used by American) the nonstop carrier's pricing by pricing their connecting service at the same level as the nonstop carrier—notwithstanding the service disadvantages associated with connecting service. US Airways, however, differed from the other legacy carriers in that on some routes it offered its ''Advantage Fares'' program under which it provided discounts for connecting service compared to other carriers' nonstop fares, particularly for last-minute travelers. The structure of the New American network reduced its incentives to continue the Advantage Fare program. *Id.,* ¶¶ 48–58.

In addition to the risk of harm from the likely elimination of the Advantage Fares program, the Complaint alleged that the merger would likely enhance coordinated interaction among the legacy carriers with respect to capacity reductions, *id.,* ¶¶ 59–70, and ancillary fees, *id.,* ¶¶ 71–81. It also alleged potential anticompetitive effects resulting from the dominance of the merged airline at Reagan National, where it would control 69 percent of the take-off and landing slots, *id.,* ¶¶ 83–90, and from the elimination of head-to-head competition between US Airways and American on numerous nonstop and connecting routes, *id.,* ¶¶ 38 & 82.

The Complaint also alleged that if the merger went through, the other established legacy carriers—Delta and United—would be unlikely to undercut anticompetitive price increases or expand in response to capacity reductions by the merged airline as ''those carriers are likely to benefit from and participate in such conduct by coordinating with the merged firm.'' *Id.,* ¶ 92. LCCs, such as Southwest, JetBlue, Virgin America, and Spirit Airlines, on the other hand, offer ''important competition on routes they fly,'' but have less extensive networks and face barriers to expansion such as a lack of access to slots and gate facilities necessary to serve constrained airports. *Id.,* ¶¶ 3 & 91, 93. For example, although Southwest carries the most domestic passengers of any airline, its network is limited compared to the legacy carriers with respect to the significant business-oriented routes served from Reagan National and LaGuardia.[8]

B. The Proposed Final Judgment

1. Terms of the Proposed Final Judgment and Status of the Divestitures

As set forth in the proposed Final Judgment, Defendants are required to divest or transfer to purchasers approved by the United States, in consultation with the Plaintiff States:

- 104 air carrier slots at Reagan National (*i.e.,* all of American's pre-merger air carrier slots) and associated gates and other ground facilities; [9]
- 34 slots at New York LaGuardia International Airport (''LaGuardia'') and associated gates and other ground facilities; and
- rights to and interests in two airport gates and associated ground facilities at each of the following airports: Chicago O'Hare International Airport (''ORD''), Los Angeles International Airport (''LAX''), Boston Logan International Airport (''BOS''), Miami International Airport (''MIA''), and Dallas Love Field (''DAL'').

Defendants have completed the divestiture of the 34 LaGuardia slots by (1) selling the 10 slots to Southwest that American had been leasing to Southwest (*see* PFJ, § IV.G.1), (2) selling an additional bundle of 12 slots to Southwest, and (3) selling a bundle of 12 slots to Virgin America. Defendants are in the process of completing the divestiture of the 104 Reagan National slots. They have divested the 16 slots to JetBlue that American previously had been leasing to JetBlue (*see* PFJ, § IV.F.1) and have sold an additional 24 slots to JetBlue. Defendants have agreed to divest 56 slots to Southwest [10] and eight slots to Virgin America. The parties expect to close the Southwest and Virgin America transactions on March 10, 2014 or soon thereafter. The United States, in consultation with the Plaintiff States, approved the LaGuardia and Reagan National divestitures. The acquirers will begin operating the slots later this year. The process for the divestiture of the gates at the remaining airports is expected to occur in the near future.

In addition to the relief provided by the proposed Final Judgment,

[5] ''Legacy airlines,'' as used herein, refers to the carriers that have operated interstate service since before deregulation and rely on nationwide hub-and-spoke networks.

[6] Four of the busiest airports in the United States—including Reagan National and LaGuardia—are subject to slot limitations governed by the FAA. The lack of availability of slots is a substantial barrier to entry at those airports, especially for LCCs. *See* Am. Compl. ¶¶ 84–86.

[7] The potential for mergers to increase the likelihood of such coordinated interaction among competitors is a central focus of the DOJ's merger review. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 7 (Aug. 19, 2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010.html.*

[8] *See, e.g.,* Motion for Leave to File *Amicus Curiae* Brief by Southwest Airlines Co. (Nov. 7, 2013, Docket No. 142) at 3 (''The pro-competitive effect of Southwest's entry and service is effective, however, only when Southwest has the ability to enter a particular market. While Southwest serves over 90 destinations in the United States, it has extremely limited access to Reagan National . . . and LaGuardia . . . due to severe entry restrictions. Service to those airports is significantly limited by the allocation of take-off and landing slots, and Southwest has been able to obtain only a very small number of slots at those two airports.'').

[9] Slots at Reagan National are designated as either ''air carrier,'' which may be operated with any size aircraft that meets the operational requirements of the airport, or ''commuter,'' which must be operated using aircraft with 76 seats or fewer.

[10] Of the 104 air carrier slots being divested, 102 are for daily service and the remaining two are allocated for Sunday-only service. Southwest is purchasing the bundles of slots containing the two ''Sunday-only'' slots. The United States understands that Southwest has declined these ''Sunday only'' slots and that they will be returned to the Federal Aviation Administration for reallocation in consultation with the Department of Justice.

Defendants reached an agreement with the Plaintiff States to maintain service from at least one of New American's hubs to specified airports in the Plaintiff States for a period of five years, Supplemental Stipulated Order (Docket No. 151), and an agreement with the United States Department of Transportation (''DOT'') to use all of its commuter slots at Reagan National to serve airports designated as medium, small and non-hub airports (*i.e.,* airports accounting for less than one percent of annual passenger boardings) for a period of at least five years.[11]

2. Explanation of the Proposed Final Judgment

The proposed Final Judgment effectively addresses the harm to competition that was likely to result from the merger. The LCCs that acquire the assets will establish stronger positions at strategically important destinations—including top business markets—where it has been particularly difficult to obtain access. These assets will provide them with the incentive to invest in new capacity and position them to offer more meaningful competition system-wide, forcing legacy carriers to respond to that increased competition. And, by increasing the scope of the LCCs' networks, the divestitures will bring the consumer-friendly policies of the LCCs to more travelers across the country. For example, neither Southwest nor JetBlue currently charges customers a first bag fee while all of the legacy carriers charge $25 per bag.

Strengthened by increased access to capacity-constrained airports, the LCCs will be able to fly more people to more places at more competitive fares. In this way, although the proposed remedy will not create a new independent airline or guarantee the continued existence of Advantage Fares on all routes, it will impede the industry's evolution toward a tighter oligopoly and deliver benefits to millions of consumers that could not be obtained even by enjoining the merger.

a. Consumer Benefits from LCC Entry

The consumer benefits that flow from LCC entry are well established. Previous work by the Department of Justice has shown that the presence of an LCC on a nonstop route results in both significant price reductions and capacity increases.[12] An extensive body of economic research confirms that LCC entry on a route—whether by nonstop or connecting service—reduces fares three times as much as the addition of a legacy competitor.[13]

These substantial consumer benefits have proved particularly meaningful when LCCs are able to gain access to slot-constrained airports. For example, in 2010, Southwest acquired 36 slots at Newark Liberty International Airport pursuant to a divestiture remedy that addressed competition concerns arising from the merger of United Airlines and Continental Airlines. Southwest used those slots to enter six nonstop routes from Newark (one of which, Newark-BWI, it later exited), resulting in substantially lower fares to consumers and increased output:

Route	Year-over-year percentage change in average fare	Year-over-year percentage change in number of passengers
Newark-St. Louis	−27	66
Newark-Houston	−15	53
Newark-Phoenix	−14	57
Newark-Chicago	−11	35
Newark-Denver	−5	49

Passengers flying on these five nonstop routes after Southwest began service saved about $75 million annually compared to what they would have had to pay prior to Southwest's entry.[14] In addition, Southwest was able to incorporate Newark service into its overall domestic network, offering low fares on connections to Newark from over sixty cities.[15] In this way, the creation of only a few nonstop routes led to 60 connecting routes. A similar multiplier effect is expected with the current divestitures.

Likewise, JetBlue used its limited number of slots at Reagan National to drive down fares and increase output on the routes it serves. For example, after JetBlue entered the Reagan National to Boston route in 2010, average fares dropped by 39 percent year-over-year and passengers nearly doubled. US Airways estimated that after JetBlue's entry, the last-minute fare for round-trip travel between Reagan National and Boston—a key business route—dropped by over $700. *See* Am. Compl. ¶ 88.

[11] The DOT agreement is available at *http://www.dot.gov/airconsumer/merger-usairways-amrcorp.* The European Commission also reviewed the merger. British Airways, which has been given antitrust immunity with American for the oneworld alliance, and US Airways are the only two nonstop competitors in the Philadelphia-London Heathrow market (''PHL–LHR''). The European Commission cleared the merger after the parties made commitments to divest a slot pair at slot-constrained London Heathrow Airport and to offer supportive interline and frequent flyer agreements to an entrant into the PHL–LHR market. *See* Press Release, European Commission, ''Mergers: Commission approves proposed merger between US Airways and American Airlines' holding company AMR Corporation, subject to conditions'' (Aug. 5, 2013), *available at http://europa.eu/rapid/press-release_IP-13-764_en.htm.*

[12] Comments of the U.S. Dep't of Justice, Notice of Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, Fed'l Aviation Admin., FAA–2010–0109, March 24, 2010 at A–2 (finding an ''economically significant impact from the presence of an LCC on nonstop route-level prices, ranging from 21% to 27% average price decreases and a 68% to 118% median increase in number of passengers depending on the data examined'').

[13] *E.g.,* Jan K. Brueckner *et al., Airline Competition and Domestic U.S. Airfares: A Comprehensive Reappraisal,* 2 Econ. Transp. 1–17 (2013) (finding that addition of nonstop LCC service reduces fares by 12% to 33% while entry of nonstop legacy service reduces fares by approximately 4%; similarly, the presence of LCC connecting service lowers fares by as much as 12%, while additional legacy connecting service lowers fares by typically less than 3%); Phillippe Alepin *et al., Segmented Competition in Airlines: The Changing Roles of Low-Cost and Legacy Carriers in Fare Determination,* (working paper), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2212860* (finding that the addition of nonstop LCC service on a route reduces fares by approximately 24% and the addition of a second nonstop LCC further reduces fares by approximately 13%); *see also* Martin Dresner *et al., The Impact of Low Cost Carriers on Airport and Route Competition,* 30 J. of Transp. Econ. & Pol'y 309–328 (1996); Steven A. Morrison, *Actual, Adjacent, and Potential Competition: Estimating the Full Effect of Southwest Airlines,* 35 J. of Transp. Econ. & Pol'y 239–256 (2001).

[14] USDOT Origin & Destination Survey. Percentage changes in average fare and number of passengers are calculated using data from the first full quarter after entry by Southwest and, as a baseline, data from four quarters before that entry. To determine annual consumer savings, the number of passengers flying on each route for each of the four quarters following Southwest's entry is multiplied by the dollar amount of the corresponding year-to-year fare change for that quarter. The annual amount is the sum of the four quarters for all of the routes. Data is not reported for the Newark-BWI route.

[15] USDOT Origin & Destination Survey, CY 2012.

b. The Importance of the Remedy Assets to Enhancing LCC Competition

The proposed settlement significantly eases some of the most intractable barriers to LCC entry and expansion throughout the country. First and foremost, the remedy provides unprecedented access to Reagan National and LaGuardia, two of the most strategically important—and most constrained—airports highly preferred by business passengers. The legacy carriers have long dominated these airports and meaningful entry by LCCs has been notoriously difficult. At Reagan National, where LCCs had only about six percent of the take-offs and landings prior to the divestitures, the remedy transfers twelve percent of the slots to LCCs, nearly tripling LCC presence there. Likewise, the remedy will extend access at LaGuardia, where LCCs hold less than 10 percent of the slots. The LCCs that are acquiring the divested slots will be able to offer through their use of the divested slots over four million seats per year at Reagan National and over 1.5 million seats per year at LaGuardia.[16]

Indeed, the transfer of Reagan National slots to LCCs will produce an immediate benefit to consumers in the form of increased capacity because LCCs are likely to use larger planes than US Airways had used.[17] Comparing the average aircraft size operated by US Airways on routes it has announced it will exit with the average aircraft size operated by Southwest and JetBlue at Reagan National in 2013, the number of seats at Reagan National is estimated to increase by over 2 million per year as a direct result of transferring the slots to LCCs, leading to a potential 10% increase in the number of passengers using the airport.[18]

And, for the first time ever, an LCC (Southwest) will be able to offer a wide array of flight options for nonstop and connecting service from Reagan National to points throughout its network, with resulting consumer benefits that, given the large number of slots at issue, are likely to significantly exceed those that occurred after its entry at Newark. Although Southwest has not yet announced which cities it will serve with the 56 slots it purchased through the divestitures, it will likely have the flexibility to add as many as six to eight new routes to its existing seven Reagan National routes.[19] The addition of each new route will create new connecting service to many more points throughout the country.[20]

Given that New American's slot holdings at Reagan National will allow it to continue to serve an extensive list of destinations, nearly anywhere Southwest, JetBlue or Virgin America choose to fly with their newly-acquired slots will provide direct competition with New American.[21] The remedy also has ensured that JetBlue will retain permanent access to the sixteen slots it formerly leased from American. JetBlue uses these slots to serve routes on which it competes directly with US Airways (and now New American). One of the harms alleged from the merger was the likelihood that New American would have cancelled the lease to eliminate that competition.[22]

Similarly, gate divestitures at O'Hare, Los Angeles (LAX), Boston, Dallas Love Field, and Miami will expand the presence of LCCs at these strategically important airports located throughout the country. The acquirers will be able to offer increased competition not just on nonstop flights to and from these key airports, but also on connecting flights nationwide. O'Hare and LAX, two of New American's major hubs, are among the most highly congested airports in the country, and competitors have historically had difficulties obtaining access to gates and other facilities at those airports.[23] Dallas Love Field is much closer to downtown Dallas than American's largest hub at Dallas-Fort Worth International Airport (''DFW''). Gates at DFW are readily available, but Love Field is gate constrained. Although today's operations at Love Field are severely restricted under current law,[24] those restrictions are due to expire in October 2014, at which point Love Field will have a distinct advantage over DFW in serving business customers near downtown Dallas. The divestitures will position the acquirer to provide vigorous competition to New American's nonstop and connecting service out of DFW. And as there is limited ability to enter or expand at Boston, the divestitures will provide relief there too.[25]

Importantly, the consumer benefits of opening access to these key constrained airports will extend beyond the passengers directly served at those seven airports. Given the importance of the airports to business travelers, the LCCs that are acquiring the slots and gates will have a more robust product for business and corporate travel. For example, as a result of the divestitures, Virgin America—one of only a few airlines to start domestic service in recent years—will enter LaGuardia, expand at Reagan National, and may expand at other constrained airports as the gate divestitures progress. As such, it will supplement its West Coast presence with service to major East Coast business destinations (and potentially additional destinations around the country), thereby establishing greater scope and scale.[26]

[16] Annual seats calculations are based on the number of divested daily slots at each airport and the average number of seats on the aircraft that the slot acquirers typically use.

[17] A large proportion of US Airways' Reagan National flights have in recent years been on small regional jets, even though it had sufficient flexibility with its slot portfolio to use larger aircraft. Absent the remedy, the merged airline would have had two-thirds of the flights at Reagan National but only half the airport's passengers. *Hearing on Airline Industry Consolidation Before the Subcomm. on Aviation Operations, Saftey and Security of the S Comm. on Commerce, Science and Transportation* (June 19, 2013) 113 Cong. (statement of W. Douglas Parker, Chairman and CEO, US Airways Group).

[18] The average aircraft US Airways operated in 2013 on the 16 routes that it plans to exit had 57.6 seats; Southwest and JetBlue operate aircraft with an average of 123.1 seats. Official Airline Guide. (The aircraft size on US Airways's current Reagan National-San Diego service is excluded because that service will simply shift to Reagan National-LAX.)

[19] Carriers typically schedule between three (in small markets) and 10 (in large markets) daily round trips when establishing a new route.

[20] If Southwest were to institute nonstop service between Reagan National and, for example, Chicago's Midway Airport (Southwest's top airport in terms of departures), it would simultaneously create convenient one-stop service between Reagan National and over 55 additional airports that Southwest serves from Midway.

[21] For example, JetBlue has announced that it will add three additional routes with twelve of the twenty-four new Reagan National slots it has acquired. Two (Charleston, SC and Hartford, CT) will add a competitor to routes that would otherwise only be served by New American from Reagan National, and the other (Nassau, Bahamas) will add LCC service on a route New American has announced it will exit. *See* Press Release, JetBlue, ''JetBlue Adds Three Nonstop Destinations for Customers at Ronald Reagan Washington National Airport, Offers Introductory One-Way Fares as Low as $30'' (Mar. 6, 2014), *available at http://investor.jetblue.com/phoenix.zhtml?c=131045&p=irol-NewsArticle.*

[22] *See* Am. Compl. ¶¶ 87–88.

[23] For example, Virgin America originally announced its intent to serve O'Hare in 2008, but its plans were delayed over three years due to a lack of gate availability. Press Release, Virgin America, ''Virgin America Breezes Into O'Hare'' (Feb. 17, 2011) (describing long-term efforts to obtain gate access), *available at http://www.virginamerica.com/press-release/2011/virgin-america-breezes-into-chicago-ohare.html.* The comments submitted by Allegiant Airlines demonstrate the importance to LCCs of obtaining gates at LAX.

[24] Under legislation known as the Wright Amendment, airlines operating out of Love Field may not operate nonstop service on aircraft with more than 56 seats to any points beyond Texas, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Mississippi, Missouri or Alabama.

[25] Although access issues at Miami are not as acute as at the other airports, the proposed Final Judgment also ensures that a carrier seeking to enter or expand at Miami will have access to two of the gates and associated ground facilities currently leased by US Airways.

[26] Virgin America has announced its interest in beginning service from Love Field to major business

Continued

Moreover, the passenger demand generated in cities where the divestitures will occur will enhance the LCCs' incentives to invest in new capacity elsewhere. For example, if Southwest were to add nonstop service from Reagan National to Nashville, the new source of passengers from the major population center of Washington, DC, could support entry or expansion on additional routes out of Nashville. At the same time, Southwest's marketing position in Nashville would be enhanced because the nation's capital is included in the service offerings available in Nashville.[27] That would in turn make it easier for Southwest to attract passengers to its other destinations and incentivize Southwest to add capacity to meet that demand.

Thus, taken together, the divestitures will substantially improve the LCCs' network quality and attractiveness to customers, position them to offer more meaningful competition system-wide, and enable them to grow faster than they otherwise would, both in the depth and breadth of their networks.[28]

III. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day public comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR) at *3 (D.D.C. Aug. 11, 2009) (discussing nature of review of consent judgment under the Tunney Act; inquiry is limited to ''whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the Complaint, whether the decree is sufficiently clear, whether the enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)). Instead,

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement in ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, the government is entitled to deference as to its ''predictions as to the effect of the proposed remedies.'' *Microsoft,* 56 F.3d at 1461; *see also SBC Commc'ns,* 489 F. Supp. 2d at 17 (explaining that district court ''must accord deference to the government's predictions about the efficacy of its remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case''); *United States* v. *Morgan Stanley,* 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012) (government entitled to deference).

Courts ''may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17. Rather, the ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461. Accordingly, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17. And, a ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of the public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations and internal quotations omitted); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

In its 2004 amendments to the Tunney Act,[29] Congress made clear its

destinations throughout the country. Press Release, Virgin America, ''Virgin America Plans Dallas Expansion: Airline wants to bring more business-friendly, low-fare flight competition to Dallas with new flights from Love Field,'' *available at http://www.virginamerica.com/press-release/2014/virgin-america-plans-dallas-expansion.html.*

[27] As Southwest's CEO stated, ''We have a lot of customers that love Southwest Airlines . . . and a lot of them want to go to Reagan.'' Charisse Jones, ''JetBlue, Southwest Gain Slots at Reagan Airport,'' USA Today (Jan. 30, 2014), *available at http://usat.ly/1b9U3ah.*

[28] We are not suggesting that this remedy eliminates all entry barriers faced by LCCs. As alleged in the Complaint, airlines (including LCCs) face entry impediments, particularly where the origin or destination airport is another airline's hub. Am. Compl. ¶ 91. However, LCCs have demonstrated some ability to overcome those disadvantages with the help of lower costs, and we expect that the network-wide strengthening brought about by the divestitures will, over time, help the LCCs overcome some of the other obstacles that limit their ability to expand.

[29] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of the Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11; *see also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (''[T]he Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to public comments alone.'').

IV. Public Comments and the United States' Response

The United States received fourteen public comments.[30] The comments have been posted on the Web site of the Antitrust Division pursuant to the Court's November 20, 2013 Order. The comments are summarized below:

• Delta Air Lines filed comments that argue that the Complaint mischaracterizes airline competition and overstates the potential harm from the merger. Delta asserts that the legacy airlines do not engage in oligopolistic pricing; instead, according to Delta, they compete vigorously with one another. Delta also argues that divestiture of Reagan National slots exclusively to LCCs would be harmful to consumers because LCCs would serve large, leisure-oriented markets instead of the small- and medium-sized communities that Delta states it would be more likely to serve. Thus, Delta argues that it should not be precluded from acquiring Reagan National divestiture slots. Delta also makes similar arguments with respect to the two American gates at Dallas Love Field, where Delta currently operates limited service by sub-leasing one of American's gates. It claims that divesting those gates to an LCC would harm Dallas-area passengers by depriving them of Delta's network service.

• Senator John D. Rockefeller IV, Senator John Thune, Congressman Bill Shuster, and Congressman Nick J. Rahall II submitted a joint letter expressing their concerns that ''the proposed Final Judgment would negatively impact competition for airline service to small communities and rural areas.'' While acknowledging that providing additional slots and gates to LCCs is likely to increase competition on certain routes, they express concern that existing service to smaller communities would not be protected. They urge the DOJ to allow all carriers to bid for the divested slots and gates, arguing that LCCs would be unlikely to use those assets to serve small communities. Senator Thune wrote separately to reiterate the concerns expressed in the joint letter, noting that Southwest's recent announcement to cease service at the three smaller airports of Jackson, Mississippi; Branson, Missouri; and Key West, Florida demonstrates that Southwest and other LCCs are not interested in serving smaller markets.

• Six commenters generally oppose the settlement on grounds that it fails to remedy harms that were alleged in the Complaint,[31] or additional harms that the commenters foresee from the transaction.[32] These comments urge that the settlement should be rejected and the merger enjoined. The commenters generally assert or presume that the United States would succeed at trial in obtaining all relief sought in its Complaint (*e.g.,* Bellemare Cmts. at 8; Messina/Alioto Cmts. at 4–5), and take the position that new LCC entry fostered by the divestitures will not be significant in comparison to the alleged harm and will not remedy the loss of competition in all of the city-pair markets that might be affected by the merger. Two commenters contend that the settlement violates a ''rule'' that ''anticompetitive effects in one market may not be justified by pro-competitive benefits in another market.'' AAI Cmts. at 11; Consumers Union Cmts. at 2. In addition to challenging the adequacy of the relief, two of the comments suggest that the settlement resulted from improper influence (Messina/Alioto Cmts. at 1–2; FlyersRights.org Cmts. at 1), and one argues that the CIS contains insufficient economic analysis (Relpromax Cmts. at 1).

• The Wayne County, Michigan Airport Authority (''WCAA''), operator of Detroit Metropolitan Airport (''DTW''), filed comments stating that, ''[f]or the most part, it appears that the proposed Settlement promotes [DOJ's] goals'' of fostering airline competition and avoiding anti-competitive effects. It expresses concerns, however, that the remedy will result in New American eliminating service on the Reagan National-DTW route, leaving Delta as the only carrier on that route. WCAA expresses its view that it is unlikely that any other carrier will provide competing service. WCAA therefore requests that the Final Judgment be modified to secure a commitment from New American to continue to operate on the route or to mandate that acquirers of the divested slots provide service to DTW. WCAA Cmts. at 2–5 & 7. WCAA also filed Supplemental Comments stating that New American has announced its intention to eliminate service on the Reagan National-DTW route.

• In addition to joining the AAI Comments, the Consumer Travel Alliance (''CTA'') and FlyersRights.org each submitted separate comments. While noting that the proposed settlement ''is clearly an attempt to preserve the same competition and comparison-shopping that American consumers should enjoy,'' CTA argues that, if the merger goes forward, DOJ should urge DOT to promote airline competition in three areas: (1) disclosure of fees for ancillary products and services and their distribution through all channels, (2) disclosure of all code-shares, and (3) more limited grants by DOT of antitrust immunity for alliance agreements between US and foreign airlines. CTA Cmts. at 2–4. FlyersRights.org argues that the Court should ''require full disclosure of settlement negotiations and lobbying and hold an evidentiary hearing where passenger groups can be represented as interveners or amicus parties.'' FlyerRights.org Cmts. at 2.

• Allegiant Air, LLC (''Allegiant'') is an LCC interested in expanding service to LAX, and it hopes to obtain access to the LAX divestiture gates. Its comments express concern that even after New American relinquishes claims to ''preferential use'' of the divested gates, it may operate out of them on a ''common use'' basis, thereby limiting LCC access. Allegiant requests that the Final Judgment be clarified to make clear that American may not use the divested gates even on a ''common use'' basis, and that DOJ work with the LAX airport operator to ensure that LCCs have priority access to the gates. Allegiant Cmts. at 2–4.

[30] As discussed, *supra* n.1, the United States also received fifteen individual emails about the merger or settlement that were sent using various channels outside of the designated procedures for submitting Tunney Act comments.

[31] Comments of The American Antitrust Institute (''AAI''), joined by AirlinePassengers.org, Association for Airline Passenger Rights, Business Travel Coalition, Consumer Travel Alliance, and FlyersRights.org (''AAI Cmts.''); Comments of Mr. Daniel Martin Bellemare; Comments of Mr. Carl Lundgren on behalf of Relpromax Antitrust, Inc. (''Relpromax Cmts.''); Comments of the Consumers Union; Comments of Mr. Howard Park.

[32] Comments of Mr. Gil D. Messina and Mr. Joseph Alioto (''Messina/Alioto Cmts.''). These commenters represent plaintiffs in the *Fjord* v. *AMR Corp.* lawsuit challenging the merger discussed *supra* n.4 and accompanying text.

As several of the comments raise similar issues, we will address the comments in five groupings: (1) whether the Complaint was justified; (2) whether the remedy fully resolves the harms alleged in the Complaint; (3) the effect of the remedy on service patterns at Reagan National; (4) whether Delta is an appropriate divestiture candidate; and (5) procedural issues relating to the proposed Final Judgment and CIS as well as other miscellaneous concerns. Unless otherwise noted, citations to specific comments merely are representative of comments on that issue and are not an indication that other comments were not considered.

A. Any Challenge to the Merits of the Complaint Is Beyond the Scope of Tunney Act Review

Delta argues that one of the key theories of the United States' case is simply wrong: it states that the allegations in the Complaint regarding competitive harm from coordination among the legacy carriers on capacity, fares and fees are unfounded. Delta asserts that the legacy carriers vigorously compete against each other on price and product quality, and it points to low margins in the industry as evidence that the legacy airlines do not coordinate.[33] Given its claims that the airline industry is highly competitive and that the legacy carriers do not coordinate, Delta appears to be arguing that the United States' challenge to the American/US Airways merger was fundamentally flawed, such that the merger should have been approved unconditionally.[34]

The United States ''need not prove its underlying allegations in a Tunney Act proceeding.'' *SBC Commc'ns,* 489 F. Supp. 2d at 20. Indeed, challenges to the validity of the United States' case, or alleging that it should not have been brought, are challenges to the initial exercise of the United States' prosecutorial discretion and are outside the scope of a Tunney Act proceeding. A Tunney Act proceeding is not an opportunity for a ''de novo determination of facts and issues,'' but rather ''to determine whether the Department of Justice's explanations were reasonable under the circumstances'' because ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *United States* v. *Western Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (citations and internal quotation marks omitted). Courts consistently have refused to consider ''contentions going to the merits of the underlying claims and defenses.'' *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981). Thus, Delta's challenge to the legitimacy of the United States' underlying case is beyond the purview of Tunney Act review.

Nevertheless, the United States notes in response to this comment that the merger raised serious competition issues and that the Complaint provides specific allegations of competitive effects arising from the transaction, particularly with respect to coordination among the legacy carriers (including Delta), that fully justified the filing of this action. *See infra* § IV.D.

B. The Proposed Settlement Will Counteract Competitive Harm From the Merger by Enhancing LCC Competition

Several commenters maintain that the proposed remedy fails to resolve fully the harms alleged in the Complaint.[35] These commenters point to the extensive harm alleged in the Complaint and assert that the new LCC entry fostered by the divestitures will not neutralize all of the competitive losses in all of the city pair markets that might be affected by the merger. The following discussion responds to commenters' contentions that LCCs will not offer meaningful competition and that the remedy does not perfectly match the allegations of harm.

1. LCCs Provide Meaningful Competition

Several commenters question the sufficiency of the competition that LCCs—and in particular Southwest—will offer as a result of the remedy. As a general response to this point, substantial evidence supports the conclusion of the United States that LCC competition is effective and that providing slots and gates to enable LCCs to expand their networks will have a significant pro-competitive effect. *See supra,* § II.B.

Delta argues specifically that LCCs are not significant competitors for most passengers, especially business passengers. Delta adopts a misleading term for LCCs—domestic leisure carriers or ''DLCs''—in an attempt to paint an inaccurate picture of LCCs as only serving leisure passengers, only serving large cities and dense routes, and only providing no-frills service.[36]

Although LCCs' route networks are not as extensive as those of the legacy carriers, it is simply not the case that LCCs single-mindedly compete for leisure customers to the exclusion of business passengers, or fly high-volume routes to the exclusion of serving smaller communities. For example, Southwest, the largest LCC, has reported that approximately 35% of its passengers are travelling on business and that corporate sales are increasing.[37] It serves numerous medium and small communities, including Rochester, Grand Rapids, and Corpus Christi. Moreover, a key part of Southwest's business model is to provide frequent flights on its routes, a service attribute highly attractive to business passengers. Similarly, JetBlue, although smaller than Southwest, also serves small and medium communities—including Richmond, Hartford, and Portland, Maine—and provides frequent service on the business routes where it flies.[38] On the Boston-Washington route described in the Complaint—a classic business route—JetBlue has ten daily frequencies and carries more passengers

[33] Delta argues that the low rate of return on investment in the airline industry relative to other industries over the past ten years ''disproves'' that there is a history of coordinated conduct among the legacy carriers. Delta Cmts at 12–15. The airline industry has suffered at times from poor financial performance (although recent record earnings by a number of carriers suggest that this history may not reflect current industry conditions). But there is no basis in law or economics to conclude that coordinated conduct cannot occur in the presence of financial distress. Firms may be especially tempted to coordinate when they are facing tough economic times. *See* Carl Shapiro, *Competition Policy in Distressed Industries,* Remarks as Prepared for Delivery to ABA Antitrust Symposium: Competition as Public Policy, May 13, 2009, 7–8 *available at http://www.justice.gov/atr/public/speeches/245857.pdf.*

[34] *See* Delta Cmts. at 9 (''The Government's case for blocking the transaction between [American] and [US Airways] was predicated in significant part on three fallacies about competition in the industry.'').

[35] *See, e.g.,* AAI Cmts. at 12 (''At bottom, the Department's settlement does not adequately remedy the harms alleged in the government's complaint.''); Messina/Alioto Cmts. at 7 (''[T]he proposed settlement does not address the central concerns raised by the DOJ's complaint.'').

[36] *E.g.,* Delta Cmts. at 21 (''Given the limitations of their business model, DLCs simply *cannot and do not* cater to travelers beyond the most price-sensitive consumers seeking travel between popular, often densely populated markets. Thus, divestitures to DLCs will add little competition for time-sensitive passengers, for business passengers, or for passengers traveling from small- to medium-sized communities.'') (emphasis in original).

[37] Southwest Airlines Co., Q3 2013 Earnings Conference Call, Corrected Transcript 13 (Oct. 24, 2013). Southwest's Chief Marketing Officer recently explained: ''A lot of people view Southwest as a leisure carrier because of our low fares, but our DNA is about being a business airline.'' Jennifer Rooney, *Southwest Airlines CMO Kevin Krone Explains What's Behind The New Grown-Up Ads,* Forbes.com, Apr. 22, 2012, *available at http://onforb.es/11Fqy7v.*

[38] For example, JetBlue serves JFK-Buffalo with nine flights per day and JFK-Boston with seven flights per day. These routes are generally characterized as business, not leisure, markets.

than American, United and Delta combined.[39]

It is also not the case that LCCs offer only basic, no-frills service that is unattractive to business passengers. In some cases, LCCs have actually been at the forefront in adding amenities designed to attract business customers. JetBlue's service has proved particularly appealing to Boston business travelers.[40] It recently introduced lie-flat seats and other amenities on certain trans-continental flights to appeal to premium customers.[41] Virgin America also caters to business passengers, billing its flights to corporate travel customers as ''your corner office in the sky.'' [42] Virgin America was the first domestic airline to offer fleetwide WiFi, and its premium class service has been named the best among domestic airlines in an annual poll of business travelers for several years in a row (Delta was fifth in the most recent poll).[43] Southwest and the other LCCs have also been upgrading their in-flight amenities to better attract business passengers.

Moreover, while Delta minimizes the competitive significance of LCCs in its comments, it has acknowledged in other settings the significant competitive effect that LCCs exert, stating in its most recent annual report that carriers such as Southwest, JetBlue, Spirit and Allegiant ''have placed significant competitive pressure on us in the United States and on other network carriers in the domestic market.'' Delta Air Lines, Inc., Annual Report (Form 10–K) 17 (Feb. 21, 2014). The other legacy carriers likewise attest to the significance of LCC competition.[44]

AAI questions the competitive significance and long-term impact of Southwest's entry on fares and service. However, the actual examples of the effects of LCC entry at slot-constrained airports discussed above (*supra* § II.B.2.a) provide compelling evidence of the importance of LCC competition. While AAI casts doubt on the long-term impact of Southwest's entry on the Newark routes,[45] the average fare for the five Newark routes over the three years since Southwest's entry has decreased compared to pre-entry levels and has decreased 17% relative to changes in national average fares during this period.[46] In other words, relative to the trend in nationwide air fares, consumers in those five Newark routes have enjoyed significantly lower fares since Southwest's entry. Moreover, Southwest has grown at the destination cities served out of Newark, demonstrating the additional procompetitive impact that can arise from opening slot-constrained airports to LCCs.[47]

2. The Remedy Adequately Addresses the Harms Alleged in the Complaint

Some commenters argue that the remedy is not in the public interest in that it does not match the harms alleged in the Complaint. In particular, they emphasize that the remedy does not provide for the continuation of US Airways's Advantage Fare program or address each city-pair route in which American and US Airways provided competing service.[48] As the United States acknowledged in the CIS, the proposed remedy does not purport to replicate the precise form of competition that will be lost as a result of the merger. Rather, it requires the divestiture of significant assets at key airports to LCCs, a divestiture that will result in the expansion of LCC competition across the nation and the delivery of substantial consumer benefits.

These procompetitive benefits compare favorably with—and in some ways exceed—those afforded by preserving competition between US Airways and American. For example, the benefits of LCC entry and expansion enabled by the remedy will extend to a larger number of passengers and deliver a greater overall benefit to consumers as compared to the Advantage Fare program. The Advantage Fare program is targeted at a narrow segment of passengers, namely, price-sensitive business passengers who purchase less than fourteen days prior to departure and are willing to take connecting instead of nonstop service. As the Complaint noted, approximately 2.5 million roundtrip passengers purchased Advantage Fare tickets in 2012, representing about four percent of the approximately 62.5 million roundtrip passengers who traveled on the routes

[39] While JetBlue was historically oriented to leisure traffic, in recent years it has ''increased [its] relevance to the business customer, particularly in Boston'' where it is the largest carrier. JetBlue Corp., Annual Report (Form 10–K) at 8 (Feb. 20, 2013). JetBlue's CEO stated that 20% of its overall customers—and 30% of its Boston customers—are business passengers. JetBlue, Q4–2011 Earnings Conference Call Transcript (Jan. 26, 2012).

[40] One Boston-based business flyer told the *Wall Street Journal:* ''The word spread pretty quickly around here: [JetBlue] had service and nice planes. . . . A lot of people in the business community prefer it. The fares are very competitive.'' Susan Carey, *How JetBlue Cracked Boston,* Wall St. J. (Feb. 8, 2012) *available at http://on.wsj.com/xHdvX4.*

[41] Press Release, JetBlue, JetBlue Introduces Mint™: The Best Coast-to-Coast Premium Service at an Unbelievably unPremium Price (Sept. 30, 2013) *http://investor.jetblue.com/phoenix.zhtml?c=131045&p=irol-newsArticle&ID=1859952.* JetBlue has also upgraded its standard product to include in-flight wi-fi and DirecTV. JetBlue was the first airline to offer DirecTV free of charge at every seat.

[42] *See, e.g.,* Corporate Travel, *VirginAmerica.com, http://www.virginamerica.com/corporate-travel.html.*

[43] The Best Airlines and Hotels for Business Travelers, *cntraveler.com http://cntrvlr.com/1890tST* (Oct. 2013).

[44] *See* American Airlines Group, Inc., Annual Report (Form 10-K) 26 (Feb. 27, 2014) (''Low-cost carriers have a profound impact on industry revenues. . . . [LCCs] are expected to continue to increase their market share through growth and, potentially, consolidation, and could continue to have an impact on our overall performance.''); United Continental Holdings, Inc., Annual Report (Form 10-K) 19 (Feb. 25, 2013) (''The increased market presence of low-cost carriers, which engage in substantial price discounting, has diminished the ability of large network carriers to achieve sustained profitability on domestic and international routes.''); US Airways Group, Inc., Annual Report (Form 10-K) 10 (Feb. 20, 2013) (''[R]ecent years have seen the growth of low-fare, low-cost competitors in many of the markets in which we operate. These competitors include Southwest, JetBlue, Allegiant, Frontier, Virgin America and Spirit. These low cost carriers generally have lower cost structures than US Airways.'').

[45] AAI Cmts. at 8 & n.15. AAI further states that ''[r]ecent empirical studies suggest that the 'Southwest effect' has significantly petered out.'' *Id.* at 8 & n.16. AAI fails to note that the principal study it cites, Michael D. Wittman & William S. Swelbar, Evolving Trends of U.S. Domestic Airfares: The Impacts of Competition, Consolidation and Low-Cost Carriers (MIT Int'l Ctr. For Air Transp., Report No. ICAT-2013-07, Aug. 2013), found that ''the presence of an LCC like Southwest, JetBlue, Allegiant, or Spirit is associated with a decrease in average one-way fare of between $15-$36,'' with the 2012 ''Southwest effect'' constituting a $17 average decrease in fares. Wittman at 20. Moreover, the true consumer savings is even greater as the study did not account for the fact that Southwest does not charge baggage fees.

[46] The national airline ticket price is calculated using DOT data, *available at http://www.rita.dot.gov/bts/airfares/national/table.* Newark market fare changes are calculated from USDOT Origin & Destination Survey.

[47] AAI dismisses this possibility by suggesting that it has not occurred at the six cities in which Southwest began to serve from Newark with slots it acquired in connection with the United-Continental merger. AAI Cmts. at 8 n.17. However, AAI incorrectly relies on departures by all airlines from these airports rather than focusing on Southwest. In the three years since its entry into these airports from Newark, Southwest has increased seats at these airports by over 10%. (Seat changes are calculated from the Official Airline Guide.)

[48] AAI argues that the settlement violates an ''out-of-market benefits rule'' and that ''anticompetitive benefits in one market [cannot] be justified by precompetitive consequences in another.'' The ''rule'' that AAI points to relates to how a court can find a Section 7 violation based on likely anticompetitive effects in one market, notwithstanding evidence of likely benefits in other markets. As explained above, however, the United States' concerns with this transaction were broad in nature. There is no ''rule'' precluding a settlement that reasonably resolves broad competitive issues even if it does not completely eliminate the possibility of harm in some markets. Indeed, the Department has made clear that it has prosecutorial discretion in considering out-of-market pro-competitive benefits, *see* U.S. Dept. of Justice & Fed. Trade Comm'n., Horizontal Merger Guidelines 30 n.14 (2010), *available at www.justice.gov/atr/public/guidelines/hmg-2010.html.*

where Advantage Fares were offered that year.[49]

By comparison, we expect Southwest, JetBlue and Virgin America to offer over four million seats per year—enough capacity for two million roundtrip passengers—at Reagan National through their use of the divested slots (which, as discussed above, is over two million more seats than US Airways and American would likely have offered absent the remedy). Similarly, we expect the acquirers of the LaGuardia slots to offer over 1.5 million seats per year—750,000 roundtrips—through their use of the divested slots at that airport, and millions of additional passengers will benefit from the new LCC service resulting from the airport gate divestitures. All of the passengers served by LCCs as a result of the divestitures will benefit from lower fares, not just the last-minute shoppers that were the primary focus of US Airways's Advantage Fare program. Benefits will also extend to passengers flying on legacy carriers on routes where the remedy injects new LCC competition because the legacy carriers will likely lower their prices in response to the new competition.[50]

Another source of harm alleged in the Complaint was the loss of head-to-head competition between US Airways and American on city-pair routes throughout the country. As set forth in the Complaint and Appendix A, American and US Airways provided competing service on seventeen nonstop routes and hundreds of connecting routes. Although the remedy will not replicate the competition lost in each of these routes, it will allow LCCs to launch more than seventeen new nonstop routes and enter and expand service on connecting routes across the country, almost all of which will be in competition with New American. Travelers flying on these routes will likely benefit from substantial savings because LCC competition typically has a much larger effect on fares than legacy competition.[51] While we do not know at this point the specific routes the LCCs will enter using the divestiture assets (and therefore cannot quantify likely effects), we can be confident that the head-to-head competition the LCCs will provide will substantially benefit millions of consumers nationwide.

Despite these benefits, some commenters challenge the adequacy of the proposed remedy because it does not eliminate the possibility of harm on every route, pointing in particular to the fact that the United States cited high concentration levels in approximately 1,000 city pair markets in Appendix A of its Complaint. *See, e.g.,* AAI Cmts. at 4. It is well established, however, that courts ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violation.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17. As described above, the United States' primary concerns with this transaction were broad in nature and the proposed remedy reasonably addresses those broad competitive issues even if it does not seek to precisely match harm on a route-by-route basis.[52]

Such comments also ignore the fact that there has been no finding of liability in this case. Market concentration statistics are a ''useful indicator'' of the likely competitive effects of the transaction, Am. Cmpl. ¶ 37, and can be used to establish a presumption that a transaction is unlawful under Section 7 of the Clayton Act. However, even if the United States were successful in establishing this presumption, Defendants would have sought to rebut it by arguing that the cited market concentration statistics (high HHIs) are not indicative of competitive harm on all 1,000 routes, especially those that already enjoy some LCC service or where one of the merging parties had a relatively small share. Def. AMR Corp.'s Answer (Docket No. 80) at 2–3. In essence, the significance of these market concentration statistics would have been highly disputed at trial. While the United States believes it would have prevailed on these issues at trial, the settlement avoids the risk and uncertainty of further litigation for all involved—factors that are appropriate for this Court to consider when evaluating whether a proposed remedy is in the public interest. *See SBC Commc'ns,* 489 F. Supp. 2d at 15 (''room must be made for the government to grant concessions in the negotiation process for settlements'').

The proposed remedy secures substantial benefits for millions of American consumers and advances competition in ways that would not have been possible even if the United States had prevailed at trial. *SBC Commc'ns,* 489 F. Supp. 2d at 23 (''Success at trial was surely not assured, so pursuit of that alternative may have resulted in no remedy at all. While a trial may have created an even greater evidentiary record, that benefit may not outweigh the possible loss of the settlement remedies.''). Thus, giving deference to the government's assessment, the proposed settlement is well within ''the reaches of the public interest.''

C. The Remedy Does Not Mandate Changes in Service Patterns at Reagan National

Several commenters expressed concerns that service patterns at Reagan National could change as a result of the slot divestitures.[53] New American has announced its intention to drop service from Reagan National to certain destinations,[54] and the purchasers of the slots have not yet announced all of the new routes they intend to fly. Slots are generally not designated for use in specific markets, and thus the acquirers may make different choices about where to fly than US Airways and American have made in the past. The United States was aware of the potential impact on existing service when crafting the remedy and took steps to ensure that the divestitures would not preclude New American from using its approximately 500 remaining slots to continue to serve any market it currently serves. While there may be some changes in service at Reagan National in the immediate

[49] Am. Compl. ¶ 58 & US DOT Origin & Destination Survey.

[50] *See* Kerry M. Tan, *Incumbent Response to Entry by Low-Cost Carriers in the U.S. Airline Industry,* working paper (May 20, 2013), *http://ssrn.com/abstract=2006471; see also supra* n.13 (listing studies).

[51] As described above, LCC entry on a route—whether by nonstop or connecting service—can have as much as three times the benefit on fares as that of entry by legacy carriers. *See supra* n.13 and accompanying text.

[52] Route-specific remedies are simply not feasible in this case nor would they be desirable. Unlike in some other industries, slot and other airport facilities necessary to serve air transportation markets are generally not dedicated to a specific market, but can be redeployed in different city-pair markets that originate or terminate at the same airport. For example, a slot that is currently used to serve Reagan National-Nashville could alternatively be used to serve Reagan National-Hartford. Thus, it is not possible to divest a route or a set of routes to a competing carrier. The government could, in theory, impose behavioral rules focused on protecting consumers in particular markets—*e.g.,* setting a cap on fares charged by New American, mandating that the merged carrier employ an ''Advantage Fares'' type pricing program, or requiring a buyer of divested gates to serve a particular route. But those types of behavioral remedies would be exceedingly difficult to craft, entail a high degree of risk of unintended consequences, entangle the government and the Court in market operations, and raise practical problems such as the need for ongoing government monitoring and enforcement. Even a full-stop injunction of the merger would not have guaranteed continued competition between the merging airlines on specific routes, nor would it have afforded the opportunity to obtain much of the relief that was made possible by the settlement.

[53] *See* Delta Cmts. at 6–7; Rockefeller *et al.* Cmts. at 1; WCAA Cmts. at 2.

[54] Press Release, American Airlines, American Airlines to Implement Network Changes as a Result of DOJ-Mandated Slot Divestitures (Jan. 15, 2014), *available at http://hub.aa.com/en/nr/pressrelease/american-airlines-to-implement-network-changes-as-a-result-of-doj-mandated-slot-divestitures.*

aftermath of the divestitures, on balance, the competitive landscape at the airport will be greatly improved as LCCs acquire the resources they need to compete effectively across a broad range of routes.[55] As discussed above, the effect of the divestitures will be a significant net increase in the number of seats operated at Reagan National.

1. Background on Slot Regulation at Reagan National

In order to appreciate the competitive implications of the Reagan National slots divestitures, it is important to understand the federal regulation at the airport. Demand for access to Reagan National has exceeded its capacity since before the airline industry was deregulated. The FAA promulgated the first set of slot rules in 1969 in order to manage the problem. The rule, known as the High Density Rule (''HDR'') limited the number of landing and take-off slots available at Reagan National and other congested airports.[56] Since 1969, the FAA and Congress have periodically revised the number of takeoffs and landings permitted at the airports and made various changes to the slot rules. Reagan National is also subject to a federally-imposed 1,250-mile ''perimeter rule'' limiting the distance of nonstop flights to and from the airport.

Many airlines consider flights to this airport to be a valuable part of the service they offer to travelers. Yet, for decades, carriers wishing to enter or expand at Reagan National have had problems obtaining slots. After the FAA's initial allocation, a carrier wishing to begin or expand service at Reagan National could theoretically buy or lease slots from an airline that already owned them, but slots have been offered for sale or trade infrequently. In April 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR–21'') which directed DOT to grant a limited number of ''exemptions'' to the Reagan National slots rules in an attempt to address these access problems, among other goals.[57] The Act created a limited number of exemptions for flights beyond the 1,250-mile perimeter limit and for destinations within the perimeter.[58] Unlike slots, exemptions are granted to airlines for service on a particular route, and the grantee airline generally cannot transfer an exemption to another airline.[59] Although exemptions have provided modest improvements to the access problems that smaller carriers face at the airport, the scarcity of slots is still a substantial barrier to entry.

A major slots transaction substantially changed the distribution of slot holdings at Reagan National in 2011. Pursuant to the ''US Airways-Delta Slots Swap,'' Delta traded 84 slots (almost half of its Reagan National slot holdings at the time) to US Airways in exchange for slots at LaGuardia. DOT approved the transaction subject to, among other remedies, the parties divesting 16 Reagan National slots to carriers who held less than 5 percent of the slots at the airport, a group that consisted exclusively of LCCs.[60] Delta divested 16 of its remaining slots to satisfy DOT's requirement.

Despite the efforts of Congress and DOT to ease access to Reagan National, over 90 percent of the authorizations to take-off and land at the airport remained in the hands of legacy carriers prior to this merger remedy.[61] The Reagan National slot divestitures pursuant to the proposed Final Judgment resulted in the transfer of an unprecedented 12 percent of the slots at the airport from legacy carriers to low-cost carriers. As the LCCs begin to provide service using the newly-acquired slots, the competitive landscape at Reagan National will change significantly and benefit consumers in Washington, DC and across the nation.

2. Nothing in the Remedy Requires New American to Discontinue Service to Particular Airports

Three commenters suggest that the proposed settlement will negatively impact third parties. Members of Congress and Delta, on the one hand, assert that service from Reagan National to certain small communities currently served by US Airways will be eliminated as a result of the divestitures.[62] The operator of the Detroit Airport, on the other hand, asserts that the large city of Detroit will lose a competitor on the Reagan National-Detroit route, partly as a result of measures that were taken to protect small communities. The United States recognizes that the Court should consider the impact of the settlement on third parties. *Microsoft,* 56 F.3d at 1462 (''And, certainly, if third parties contend that they would be positively injured by the decree, a district judge might well hesitate before assuming that the decree is appropriate.''). Here, however, the settlement itself does not mandate that New American eliminate service on any particular route, and in fact it ensures that New American will retain enormous flexibility to determine which

[55] The fact that a nonstop flight from Reagan National to a particular city may be discontinued does not mean that passengers from that city are unable to fly to Washington. As New American stated in its press release announcing the nonstop routes it had decided to cut, ''[c]ustomers in these communities will still have access to DCA, which remains a key hub for American, through connecting flights from one or more of the airline's other eight hubs.'' *Id.*

[56] High Density Traffic Airports, 14 C.F.R. § 93.121–133. Under the HDR, the FAA allocated slots to airlines based on their existing operating schedules at the airports. Subject to the FAA's ''use or lose'' regulations and other conditions, the carriers were essentially granted access to the slots in perpetuity, and had permission to buy, sell, and trade them. The rules divided slots into two categories: ''air carrier'' slots useable by any type of aircraft, and ''commuter'' slots that are restricted to smaller aircraft. The airports governed by the rule at the time were LaGuardia, John F. Kennedy International, Newark Liberty International, O'Hare and Reagan National. Although LaGuardia, JFK, and Newark are still subject to slot controls, Reagan National is the only airport governed by the HDR today.

[57] Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 41718, Pub. L. No. 106–181, 114 Stat. 61, 112–115 (2000). Through AIR–21, Congress established criteria for DOT to use when granting ''within-perimeter'' exemptions that reflect a balance of competition and other goals: ''[T]he Secretary shall develop criteria for distributing slot exemptions for flights within the perimeter to such airports under this paragraph in a manner that promotes air transportation: (1) by new entrant air carriers and limited incumbent air carriers; (2) to communities without existing nonstop air transportation to Ronald Reagan Washington National Airport; (3) to small communities; (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to Ronald Reagan Washington National Airport; or (5) that will produce the maximum competitive benefits, including low fares.'' 49 U.S.C. § 41718(b).

[58] Many of the ''outside perimeter'' exemptions were granted to legacy carriers.

[59] 49 U.S.C. § 41714(j). Two subsequent federal statutes, enacted in 2003 and 2012, expanded the number of exemptions at DCA. Vision 100-Century of Aviation Reauthorization Act (Vision 100), Pub. L. No. 108–176 § 425, 117 Stat. 2490, 2555 (2003) and the FAA Modernization and Reform Act of 2012, Pub. L. No. 112–95 § 414, 126 Stat. 11, 90 (2012).

[60] Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 76 Fed. Reg. 63,702, 63,703 (October 13, 2011). The transaction required DOT review because the rules governing LaGuardia prohibit permanent transfers of slots without a waiver from DOT.

[61] A total of 808 daily slots and 64 daily exemptions have been allocated to commercial airlines. New American would have held 69 percent of the slots post-merger, but as a result of the remedy, its share will drop to 57 percent, which is comparable to US Airways' pre-merger holdings. Delta holds 13 percent, and United holds 9 percent. Post-divestitures, Southwest will hold 9 percent, JetBlue will hold 7 percent, and Virgin America will hold 1 percent. Other carriers at the airport include Air Canada, Alaska Airlines, Frontier Airlines, and Sun Country Airlines, all with less than 2 percent. (Shares are based on July 2013 FAA slot holdings and exemption data and do not reflect changes in slot holdings as the result of Republic's recent sale of Frontier, which may prompt the reallocation of a small number of slots.)

[62] Notably, none of the small communities allegedly affected by the remedy filed comments, and several of them are located in states that separately settled with the defendants.

routes it will serve with its remaining slots.

The proposed Final Judgment intentionally does not call for the divestiture of any of US Airways's or American's ''commuter'' slots (a total of about 150), which are particularly well-suited for service to small communities given that they are limited to smaller-sized aircraft. Instead, it calls only for divestiture of ''air carrier'' slots. This distinction was made to increase the likelihood that New American's service to small and medium communities would be maintained. Defendants' agreement with DOT, *see supra* n.11 and accompanying text, also is designed to preserve service to small communities by requiring New American to use its commuter slots at Reagan National to serve medium and small airports.[63]

Moreover, New American will remain the largest holder of slots at Reagan National, with over 50 percent of the total number at the airport. Other than the commitments it has made to DOT with respect to commuter slots, it will maintain complete flexibility to deploy its slots in any way it sees fit.[64] It will not be obligated to eliminate service on any route. US Airways and Delta made this very point when responding to DOT's concerns in connection with the US Airways-Delta Slots Swap. DOT was concerned that as Delta and US Airways gave up slots at Reagan National and LaGuardia, respectively, they would eliminate service on particular routes where they competed against each other. US Airways and Delta explained:

Here, . . . Delta and US Airways are selling only some of their DCA and LGA slots to each other and each will continue to be independent competitors and retain substantial slots at both airports. The slots each retains (and those each is selling) are not tied to any particular city-pair. How the carriers decide to schedule their remaining slots is completely within each carrier's unilateral discretion, and nothing in this transaction obligates Delta or US Airways to stop competing on any route.[65]

In short, New American would be making a business decision as to which routes it serves. An inherent feature of the airline industry, and independent of any changes in slot holdings, is that airlines reassess how to deploy their assets and enter and exit routes as they seek to take advantage of profit opportunities. For example, in early 2013, US Airways stopped providing nonstop service between Reagan National and Bentonville, Arkansas (XNA), a market it had entered only five months earlier. Going back in time, US Airways exited a number of markets it formerly served from Reagan National—*e.g.,* Cleveland (CLE), Houston (IAH), Chicago (ORD), and Atlanta (ATL)—despite not having given up a single slot.[66]

It is not surprising that New American would make some changes to its service patterns as a result of the merger, and indeed it has announced that it will make some adjustments at Reagan National. It recently announced that it would no longer operate ''year-round, daily nonstop service to 17 destinations from DCA'' including large cities such as San Diego, Minneapolis, and Detroit, and small communities such as Jacksonville (NC) and Fort Walton Beach.[67] US Airways had added its Reagan National service to nearly all of these cities within the last two years. But none of these cities were guaranteed nonstop US Airways service in perpetuity. As time progressed, US Airways may well have chosen to shift out of additional markets independently of the merger.[68]

3. Mandating Service on Any Particular Route Is Unwarranted

Wayne County Airport Authority (''WCAA'') expressed its concern that, following the divestitures, New American will eliminate service on the Reagan National-Detroit route, leaving Delta as the only carrier on the route. WCAA asserted that it is unlikely that any other carrier will replace that lost competition, and that the settlement should be revised to ensure that a second carrier commits to serving the market.[69] As explained above, the settlement itself does not require New American to eliminate its existing service on any route, including Reagan National-Detroit. Any modification that would restrict how airlines use their assets would be likely to inhibit, not promote, competition. One of the benefits of the proposed remedy is that LCCs will, for the first time, have a meaningful ability to shift slots to serve different routes as market conditions change. For example, if prices increase on the Reagan National-Detroit route following New American's exit, Southwest and JetBlue will now have sufficient slot resources such that they could consider entering the market in the future, even if they decide not to serve that route as an initial matter. Such flexibility would be lost if slot holders were locked in to serving particular routes.

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[63] Even in cases where third parties have property or contract rights in the particular assets being divested, courts have approved settlements where the decree contains ''provisions designed to protect against undue harm.'' *See United States* v. *Pearson plc,* 55 F. Supp. 2d 43, 46–47 (D.D.C. 1999) (finding decree requiring divestiture of certain textbook lines to be in public interest notwithstanding claim by impacted author that his forthcoming book would be negatively affected by divestiture). Although the communities served from Reagan National do not have a property or contract right to the slots that airlines use to provide such service, the government has nevertheless structured the relief to guard against potential undue disruptions to small communities.

[64] It also seems likely that New American has sufficient capacity to complete the divestitures and maintain service to most, if not all, of the cities it currently serves simply by using its slots more efficiently, *e.g.,* by using larger aircraft and reducing frequency on some of its routes. US Airways, in particular, has a history of flying high-frequency, low-load factor, and often low-capacity aircraft carrying a high percentage of connecting passengers on a number of its Reagan National routes.

[65] Comments of Delta Air Lines, Inc. and US Airways, Inc. at 31, Federal Aviation Administration Notice of a Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport (2010) (Docket No. FAA–2010–0109), *available at http://www.regulations.gov/#!documentDetail;D=FAA-2010-010.*

[66] US Airways exited Cleveland in November 2005, Houston in February 2006, O'Hare in July 2006, and Atlanta in October 2008. Delta's route choices at Reagan National have been even more fluid. It has eliminated service to cities such as Ft. Lauderdale (FLL), Birmingham (BHM), Milwaukee (MKE), Lansing (LAN), Melbourne (MLB), Baton Rouge (BTR), Raleigh/Durham (RDU), and Huntsville (HSV)—none of which was prompted by the loss of slots. In March 2012, Delta even chose to return a pair of exemptions that it had been granted specifically for service on the Reagan National-Jackson, Mississippi (JAN) route, rather than continuing to fly the route.

[67] *American Airlines to Implement Network Changes as a Result of DOJ-mandated Slot Divestitures,* PR Newswire, Jan. 15, 2014, *available at http://hub.aa.com/en/nr/pressrelease/american-airlines-to-implement-network-changes-as-a-result-of-doj-mandated-slot-divestitures.* The complete list includes Augusta, GA (AGS); Detroit, MI (DTW); Fayetteville, NC (FAY); Fort Walton Beach, FL (VPS); Islip, NY (ISP); Jacksonville, NC (OAJ); Little Rock, AR (LIT); Minneapolis, MN (MSP); Montreal, Canada (YUL); Myrtle Beach, SC (MYR); Nassau, Bahamas (NAS); Omaha, NE (OMA); Pensacola, FL (PNS); San Diego, CA (SAN); Savannah, GA (SAV); Tallahassee, FL (TLH); and Wilmington, NC (ILM).

[68] And despite New American's claim that the changes were ''a result of DOJ-mandated divestitures,'' some changes were clearly independent of the divestitures—*e.g.,* there is no possible connection between the settlement and New American's decision to exit Reagan National-San Diego, which was made possible through an ''out of perimeter'' slot exemption that New American will continue to hold and use for additional service to LAX. The remedy did not require divestiture of any exemptions, such as those needed to provide service to LAX or San Diego. New American chose on its own to stop serving San Diego in favor of increasing service to LAX.

[69] WCAA Cmts. at 5–7. Some may argue that the United States should similarly preserve service to the other markets New American has announced it will exit. Such a result, however, would raise the same significant concerns with mandating service discussed above, *see supra,* n.52.

D. Delta Is Not an Appropriate Divestiture Candidate

Delta, while first arguing that the government's theory of liability was flawed (*supra* § IV.A), asserts that it should be entitled to acquire a significant portion of the remedy assets, namely slots at Reagan National and the two gates at Dallas Love Field. Section IV.N. of the proposed Final Judgment requires that the assets be divested to an acquirer or acquirers who in the judgment and sole discretion of the United States ''will remedy the competitive harm alleged in the Complaint.'' In response to Delta's request to acquire assets, the United States considered all the facts and circumstances in determining whether Delta should be considered an appropriate divestiture candidate. The United States concluded that divesting assets to Delta would fail to address the harm arising from the merger and would be inconsistent with the goals that the remedy seeks to achieve.

In cases involving allegations of coordinated effects arising from a proposed merger, divestiture assets should not be acquired by firms that are part of the oligopoly. As the Antitrust Division's Policy Guide to Merger Remedies explains:

If the concern is one of coordinated effects among a small set of post-merger competitors, divestiture to any firm in that set would itself raise competitive issues. In that situation, the Division likely would approve divestiture only to a firm outside that set. [FN: Indeed, if harmful coordination is a concern because the merger is removing a uniquely positioned maverick, the divestiture likely would have to be to a firm with maverick-like interests and incentives.] [70]

The Complaint describes oligopoly behavior by the legacy carriers (including Delta), such as examples of legacy carriers ''respecting'' the nonstop prices of cooperating legacies but undercutting the nonstop fares of US Airways in response to its Advantage Fares program and tactics used to deter aggressive discounting and prevent fare wars.[71] Delta's Comments ignore these specific allegations of coordinated behavior.

The allegations of coordination among the legacy carriers fully justify the United States' discretionary decision to direct that the divestiture assets be sold to firms that are unlikely to follow industry consensus, in this case the LCCs. The goal of the divestiture remedy is to enhance the ability of the LCCs to frustrate coordination among the legacy carriers. Allowing Delta to acquire divestiture assets would undermine the effectiveness of the remedy to accomplish this goal and, given Delta's status as the second largest slot holder at Reagan National, would exacerbate the slot concentration issues at that airport.[72]

Delta further claims that an LCC-only divestiture of slots would be ''harmful to competition'' as Delta would be more likely than LCCs to serve small- and medium-sized communities, including those communities that New American is exiting. Delta Cmts. at 24–30. Delta's argument ignores the substantial benefits of LCC competition, especially with respect to entry at slot-constrained airports long dominated by legacy carriers (*see supra* § II.B.2.a). It also ignores the fact that LCCs routinely serve small- and medium-sized communities; indeed, JetBlue has already announced schedules for half of the twelve roundtrip flights it will serve from Reagan National with its divested slots and five of these six new flights will be to small- or medium-sized communities, either to replace service that New American is exiting or in competition with New American.[73] Southwest is likely to serve many more such cities when it announces its schedule at Reagan National. Finally, Delta fails to note that *none* of the proposed markets it claims it would serve with the additional forty-four slots it requests (*i.e.,* over 40% of the total number of Reagan National slots being divested) corresponds to routes New American is exiting.[74]

With respect to the divestiture of the Love Field gates, Delta argues that ''no reasonable justification'' exists to favor LCCs over Delta.[75] Delta Cmts. at 30–34. But the point of the Love Field divestiture is for an LCC to offer service at the airport that even Delta recognizes is ''poised to become a highly attractive option for business travelers from across the nation who will be drawn by its proximity to the Dallas city center.'' *Id.* at 31. The acquirer of the gates will be able to offer a compelling product to sought-after business passengers who otherwise would favor New American's service out of its hub at DFW. Obtaining access to Love Field will significantly enhance the acquirer's ability to meaningfully compete against New American, thereby furthering the overall goals of the remedy. *See supra* § II.B.2.b. In contrast, Delta, given its overall size and scope as well as its presence at DFW, can and does challenge New American for the business of corporate customers flying to and from the Dallas area.

Delta also asserts that it is the only airline that can offer business travelers at Love Field a network of domestic and international destinations, but Delta's network offerings are not unique at Love Field. United Airlines, which has access to two gates at Love Field, offers a network of locations substantially similar to Delta's. Delta also argues that only it offers a ''premium product'' that includes amenities such as a first-class cabin and ''Wi-Fi-enabled'' aircraft, but it ignores the fact, as discussed above (*supra* § IV.B.1), that many LCCs offer, and were frequently pioneers in offering, products and amenities that appeal to business travelers.[76]

[70] U.S. Dep't of Justice, Antitrust Div., Antitrust Division Policy Guide to Merger Remedies 28 (2011) [hereinafter *Remedies Guide*]; *see also id.* at 31 (''However, this concern is adequately and more directly addressed by applying the fundamental test that the proposed purchaser must not itself raise competitive concerns.''). The same concepts appeared in the Antitrust Division's 2004 Policy Guide to Merger Remedies. *See generally Phillip E. Areeda and Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶ 990d (3rd ed. 2011 and Supp. 2013) (discussing *Remedies Guide*).

[71] Am. Compl. ¶¶ 48–54 (describing legacy carriers' response to the Advantage Fares program) & ¶ 43 (describing ''cross-market initiatives'' between Delta and US Airways).

[72] *See Remedies Guide, supra* note 70, at 28 (''[I]f the concern is that the merger will enhance an already dominant firm's ability unilaterally to exercise market power, divestiture to another large competitor in the market is not likely to be acceptable, although divestiture to a fringe incumbent might.'').

[73] JetBlue will provide two flights a day to Charleston, SC (small community, competing against New American), two to Hartford, CT (medium community, competing against New American), and one to Nassau, Bahamas (small community, New American is exiting). The other flight announced so far will be to Tampa, Florida. JetBlue expects to announce the remaining six flights later this year. Press Release, JetBlue, ''JetBlue Adds Three Nonstop Destinations for Customers at Ronald Reagan Washington National Airport, Offers Introductory One-Way Fares as Low as $30'' (Mar. 6, 2014), *available at http://investor.jetblue.com/phoenix.zhtml?c=131045&p=irol-NewsArticle.*

[74] *Compare* Delta Cmts. at 29 (listing proposed routes to serve) *with supra* n.67 (listing cities American has announced it will discontinue service from Reagan National).

[75] Historically, the Wright Amendment restricted service from Love Field to destinations in certain nearby states. In 2006, Congress enacted the Wright Amendment Reform Act of 2006, under which the perimeter restrictions will be removed effective October 13, 2014. However, that statute also ratified and effectuated an agreement among American, Southwest and Dallas-Ft. Worth area authorities that capped the number of gates at Love Field to twenty. *See* The ''Five Party Agreement,'' (July 11, 2006) reproduced in S. Rep. No. 109–317, at 4–15 (2006)). Southwest leases 16 of the Love Field gates and American and United lease two each.

[76] Delta also argues that it should obtain the Love Field gates to prevent Southwest, which currently operates 16 of the 20 gates at Love Field, from becoming even more dominant at the airport. As

Continued

Finally, Delta's claim that it will be improperly evicted due to the divestiture is similarly unavailing. Delta currently operates one gate under a sub-lease from American that is terminable on thirty-days' notice. (Another airline, Seaport, sub-leases the other American gate.) But for the remedy, New American was likely to terminate the subleases and operate the gates itself,[77] an outcome that Delta surely recognizes given the competitive value of the gates once the Wright Amendment restrictions expire in October of this year. Delta, therefore, never had a contractual (or other) right or expectation that it would be able to remain at the American gate. The divestiture does not change this fact.

In the end, the thrust of Delta's position is that its private interests in obtaining divestiture assets should trump the remedial goals of the proposed Final Judgment.[78] Yet, no third party has a right to demand that the Government exercise its discretion in approving divestiture buyers to better serve the private interests of that third party. While a court may inquire into the impact of the settlement on third parties, it ''should not reject an otherwise adequate remedy simply because a third party claims it could be better treated.'' *Microsoft,* 56 F.3d at 1461 n.9.

E. Additional Concerns Raised by Commenters

1. Airline Consumer Disclosure and Alliance Issues Are Outside the Scope of This Action

The Consumer Travel Alliance (''CTA'') recognizes that the PFJ contains ''some good first steps'' to prevent harm from the merger, but argues that the competitiveness of the airline industry is undermined by the failure of the Department of Transportation to take action in several areas: ''while DOJ is attempting to address the loss of airline competition through settlement regarding this merger, the DOT diminishes competition by not requiring truthful disclosure of airfares and ancillary fees, deception created by code-sharing and the de facto mergers spawned by DOT's liberal allowance of antitrust immunity.'' CTA Cmts. at 2. It urges that the Department of Justice advocate to DOT that it take action in these areas to increase disclosure requirements and reduce the breadth of airline alliances. Similarly, Mr. Bellemare's Comments appear to suggest that the Court should enjoin the proposed merger so that the United States could seek the repeal of the ''regulatory barrier'' to entry posed by slot restrictions at Reagan National and other airports. Bellemare Cmts. at 16.

As CTA appears to recognize, the problems it describes and the remedies it proposes exist independently from this transaction, and are outside the scope of the Tunney Act proceedings in this action. The same is true of the entry constraints posed by the need to allocate the limited resource of runway and airspace capacity at Reagan National and the New York airports. With respect to the latter issue, the proposed Final Judgment explicitly addresses the transaction's impact on slot holdings and entry at slot-controlled airports. We note, moreover, that the Department of Justice does regularly consult with DOT on a formal and informal basis to preserve and advance airline competition.

2. The Proposed Final Judgment Precludes New American from Reacquiring the Divested Gates at LAX; No Modification of the Decree Is Necessary

Allegiant, an LCC, submitted a comment on the divestiture of gates at Los Angeles International Airport (''LAX''). Allegiant believes that New American intends to attempt to gain access to the gates identified in the proposed Final Judgment (31A and 31B) under the airport's common use procedures,[79] and that this would result in the gates not being available for use by LCCs as intended by the proposed Final Judgment.[80] Allegiant requests that the Final Judgment be modified to make clear that the prohibition on re-acquisition of divested assets (Section XII) applies to use of gates on a common use basis. Allegiant further submits that the United States should work with the relevant airport authority, Los Angeles World Airports (''LAWA''), to ensure that the gates be available to LCCs.

As Allegiant correctly states, the purpose of the requirement that Defendants divest two gates at LAX and the four other key airports is to provide access to LCCs in order to allow them to expand their networks. The intent of the decree is that there be two gates available for LCC use beyond what would have existed but for the divestiture. The gate divestiture can be accomplished either by Defendants sub-leasing the gates to one or more LCCs on the same terms as Defendants lease the gates or by Defendants turning the gates back to the airport ''to enable the Acquirer to lease them from the airport operator.'' Section IV.H. The decree also prohibits Defendants from re-acquiring ''any interest'' in the divested assets. Section XII.

The divestiture process with respect to the key airport gates—including those at LAX—has not yet begun.[81] Nevertheless, the United States has been in communication with LAWA concerning the issues raised by the terms of the proposed Final Judgment.[82] The United States believes that the existing language in the proposed Final Judgment prohibiting Defendants from taking any action to impede the

discussed in the CIS, providing a LCC with the opportunity to differentiate itself from the large hub carrier in Dallas should increase its competitive vigor and ability to grow. CIS at 9–10. Delta incorrectly assumes that restricting eligible bidders for the American gate interests would result in acquisition by Southwest. At least one other LCC has expressed significant interest. Press Release, Virgin America, ''Virgin America Plans Dallas Expansion: Airline wants to bring more business-friendly, low-fare flight competition to Dallas with new flights from Love Field,'' *available at http://www.virginamerica.com/press-release/2014/virgin-america-plans-dallas-expansion.html.* The United States will take all competitive factors into account when determining which acquirer to approve.

[77] *See* Terry Maxon, *The New American Airlines would have liked to have used the Dallas Love Field gates,* The Dallas Morning News Airline Biz Blog (Jan. 28, 2014, 6:10 PM), *http://aviationblog.dallasnews.com/2014/01/the-new-american-airlines-would-have-liked-to-have-used-the-dallas-love-field-gates.html/?nclick_check=1.*

[78] It is in Delta's interests to restrain the growth of LCCs, as the more LCCs grow, the more likely it is that they will expand offerings that compete with Delta. For example, as LCCs obtain more slots at Reagan National, the more likely it will be that they will initiate service on the highly-profitable ''hub routes'' that Delta currently serves (such as Reagan National to Minneapolis or Detroit). Such a result could significantly reduce fares and profits, as occurred when JetBlue was able to compete against USAirways on its Reagan National-Boston route, *see* Am. Compl. ¶ 88. The fewer slots that are available to low-cost competitors, the less likely it will be that a LCC will have sufficient slots to challenge Delta in any of its lucrative Reagan National routes. The same concept applies at Love Field, where the divestiture may allow an LCC to offer highly competitive service to business passengers that otherwise may have chosen Delta's service from DFW.

[79] Airport gates leased to a particular carrier on a preferential use basis allow the leasing carrier to use the gate subject to the airport authority's ability to provide access to another airline if the gate is not being used by the lessor. The airport authority often controls some ''common use'' gates and allocates them to carriers on a per-use basis.

[80] Allegiant's concern about this issue, which other LCCs have also raised with the Department of Justice, demonstrates that there is unmet demand for gates at LAX and that Delta's claim to the contrary, Delta Cmts. at 31 n.50, is false.

[81] Prior to the settlement agreement between the United States and Defendants, US Airways was in the process of moving to Terminal 3 at LAX where the two gates subject to the decree are located. It was originally intended that US Airways would occupy the gates under a preferential use lease, but due to the settlement that lease has not been executed and the two gates subject to the divestiture are common use gates controlled by the airport.

[82] Until the divestiture process is completed, the two gates may be used by New American or any other carrier granted access under the airport's common use rules.

divestiture or re-acquiring ''any interest'' in the divested assets is sufficient to prevent New American from using the airport's procedures to block LCC access to the two gates. Accordingly, it is not necessary to modify the proposed Final Judgment.

3. The CIS Fully Complies with Tunney Act Requirements

Relpromax argues that the Competitive Impact Statement (''CIS'') is deficient and requests that the Court require the United States to rewrite the CIS and resubmit it for public comment. Relpromax faults the CIS for failing ''to provide substantive economic analysis.'' Relpromax Cmts. at 13. Although couched in terms of an alleged failure by the United States to comply with the Tunney Act, Relpromax's objections are in fact largely an objection to the proposed Final Judgment itself. The CIS fully complies with the Tunney Act requirements.

Congress enacted the Tunney Act, among other reasons, ''to encourage additional comment and response by providing more adequate notice [concerning a proposed consent judgment] to the public.'' S. Rep. No. 93–298 at 5 (1973); H.R. Rep. No. 93–1463 at 7 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538. The CIS is the primary means by which Congress sought to provide more adequate notice to the public. The Tunney Act requires that the CIS ''recite'':

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violations of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for a consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

15 U.S.C. § 16(b).

There is no dispute that the CIS satisfies the requirements of the Tunney Act with respect to items 1, 2, 4 and 5 listed above. Relpromax asserts that the CIS fails to adequately address item 3 (explanation of the proposed judgment) because it lacks sufficient economic analysis.[83] Relpromax provides its own economic analysis, arguing that it shows that the proposed decree is inadequate.[84] Relpromax's comments about the adequacy of the CIS are thus in fact complaints about the substance of the proposed Final Judgment. It is clear from the detailed substantive comments filed here (including those of Relpromax) that the CIS contains sufficient explanation to allow the public to understand the provisions of the decree and submit meaningful comments.

Relpromax also complains that the CIS does not meet the Tunney Act requirements because the description of alternatives to the decree considered by the United States (item 6 above) discusses only continuing to litigate the case through trial. Relpromax argues that because the statute refers to ''alternatives'' in the plural the United States is required to describe multiple alternatives. Relpromax Cmts. at 10–11. The statute only requires that the CIS describe alternatives the United States ''actually considered.'' 15 U.S.C. § 16(b). In this case the United States did not consider alternatives other than continuing the litigation, and therefore the CIS meets the requirements of the Tunney Act.

4. The Remedy Is Not the Result of Political Pressure

Certain commenters argue that that the settlement is not in the public interest because—according to them—the settlement resulted from lobbying by the airlines and political pressure directed toward the United States. Messina/Alioto Cmts. at 1; FlyerRights.org Cmts. at 1. Any allegations that the settlement is the result of improper lobbying or political pressure are both unsubstantiated and meritless. The settlement resulted from good faith negotiations between the Antitrust Division and Plaintiff States, on the one hand, and Defendants, on the other. It reflects substantial relief that addresses the competitive harm alleged in the Complaint. In short, there is no basis to allege that the settlement results from any impropriety.[85]

The commenters' mere speculation of bad faith or malfeasance is insufficient to justify rejection of a proposed consent decree. *See United States* v. *Associated Milk Producers,* 394 F. Supp. 29, 39–40 (W.D. Mo. 1975), *aff'd,* 534 F.2d 113 (8th Cir. 1976) (finding that lobbying activities by the defendant—even ones that are ''intensive and gross''—were insufficient to reject proposed decree or require further evidentiary hearing). Moreover, one commenter's request for a ''full disclosure of the papers leading up to the settlement,'' FlyerRights.org Cmts. at 1, should be rejected as the commenter offers no reason to doubt the sufficiency of Defendants' compliance with the Tunney Act's disclosure requirements, 15 U.S.C. § 16(g), and no basis to otherwise justify a fishing expedition. *See Associated Milk Producers,* 394 F. Supp. at 38–40.

5. Closing of the Merger Prior to Entry of the Final Judgment Is Consistent with Tunney Act Requirements

Two commenters suggest that allowing Defendants to consummate the merger prior to entry of the Final Judgment was inconsistent with the Tunney Act and not appropriate. AAI Cmts. at 1 n.1; Relpromax Cmts. at 12–13. It is common practice to close a transaction prior to completion of the Tunney Act process. Nothing in the Tunney Act prevents the parties from closing and courts have long acknowledged and accepted this practice. *See, e.g., United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736 at 8 (D.D.C. 2009) (''consistent with asserted Department of Justice policy . . . the merger was allowed to close . . . while approval of the proposed Final Judgment [was]

[83] Relpromax seems to suggest that a CIS should include a level of analysis similar to that contained in a Regulatory Impact Analysis (''RIA'') required by Executive Orders 13563 and 12866 when a federal regulatory agency is considering a significant rule. Relpromax Cmts. at 15. RIAs must contain detailed cost-benefit analyses as well as a discussion of a number of specified possible alternatives to a proposed regulation. *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A–4, Regulatory Analysis (2003). This is far beyond what is required in a CIS.

[84] Relpromax purports to quantify harm from the merger and benefits from the proposed remedy. Relpromax Cmts. at 2–9. However, most of its estimates consists merely of ''round number figures'' for harms the author was ''unable to calculate.'' *Id.* at 4. Moreover, Relpromax's methodology grossly understates the likely benefits of the proposed remedy. In particular, it assumes that any LCC entry and expansion that results from improved access to congested airports will merely serve to partially offset price increases resulting from lost competition between the merging parties. On the contrary, in markets where the proposed remedy facilitates LCC entry and expansion, consumers are likely to enjoy substantial net benefits.

[85] The Messina/Alioto comments also wrongly suggest that the representatives of consumers, unlike the airlines, did not have access to federal officials. Messina/Alioto Cmts. at 1–2. In fact, as some of the other commenters can attest, the Department of Justice had meetings and conversations with affected parties throughout the entire investigation and litigation process. The United States took the views of consumers into account when crafting the proposed relief. The United States was not, of course, at liberty to share the details of sensitive settlement negotiations with third parties.

pending''); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 8 (D.D.C. 2007) (noting that the transaction closed over a year prior to entry of the Final Judgment ''in keeping with [DOJ's] standard practice that neither stipulations nor pending proposed final judgments prohibit the closing of the mergers''); *United States* v. *Pearson plc,* 55 F. Supp. 2d 43, 44–45 (D.D.C. 1999) (observing that the transaction was consummated and divestitures completed prior to the public interest determination under the Tunney Act).[86] Of course, the United States retains the right to withdraw its consent to the decree or the settlement could be rejected by the Court. Defendants, by choosing to close prior to entry of the Final Judgment, have accepted the risk of undoing the merger should it be necessary.

CONCLUSION

After reviewing the public comments, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is therefore in the public interest. Upon publication of this Response to Comments in the **Federal Register,** the United States will file a certification that all of the requirements of the APPA have been satisfied, and will file a motion with this Court to enter the proposed Final Judgment. The United States submits that a hearing is not necessary.

Dated: March 10, 2014.

Respectfully submitted,

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[86] The Bankruptcy Court hearing the AMR case specifically rejected as ''based on a faulty assumption'' the private plaintiff's argument that the Tunney Act bars consummation of a merger pending entry of a proposed Final Judgment. Memorandum of Decision and Order at 22–23, *In re AMR Corp.* & *Fjord v. AMR Corp.,* (Bankr. S.D.N.Y. Nov. 27, 2013) (11–15463 & Adv. Pr. No. 13–01392), *available at http://www.amrcaseinfo.com/pdflib/72_01392.pdf.* The Bankruptcy Court denied plaintiff's request to enjoin the closing of the merger. *Id.*

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Sematech, Inc. d/b/a International Sematech

Notice is hereby given that, on February 6, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ebara Corporation, Tokyo, JAPAN; Inficon, Syracuse, NY; Micron, Manassas, VA, and TowerJazz, Migdal Haemek, ISRAEL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on November 12, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 9, 2013 (78 FR 73884).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–05452 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Armaments Consortium

Notice is hereby given that, on February 6, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bulova Technologies Group Inc., Tampa, FL; Colt Defense LLC, Hartford, CT; D&S Consultants, Inc. (DSCI), Eatontown, NJ; Defense Research Associates, Inc. (DRA), Beavercreek, OH; Innovative Materials and Processes, LLC, Rapid City, SD; Quantum Technology Consultants, Inc., Franklin Park, NJ; South Dakota School of Mines and Technology, Rapid City, SD; The Charles Stark Draper Laboratory, Inc., Cambridge, MA; Touchstone Research Laboratory, LTD, Triadelphia, WV; University of Louisiana at Lafayette, Lafayette, LA; and Vingtech, Biddeford, ME, have been added as parties to this venture.

Also, NAVSYS Corporation, Colorado Springs, CO; Thales USA Defense & Security, Inc, Arlington, VA; Tiburon Associates, Inc., Alexandria, VA; Vermillion Incorporated, Wichita, KS; and Wilkes University, Wilkes-Barre, PA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on November 14, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 9, 2013 (78 FR 73884).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–05454 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Unified Extensible Firmware Interface Forum

Notice is hereby given that, on February 5, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Unified Extensible Firmware Interface Forum (''UEFI Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Unified Extensible Firmware Interface Forum, Beaverton, OR. The nature and scope of UEFI Forum's standards development activities are: UEFI Forum members, through the Forum's Working Groups, develop, manage, and promote UEFI Specifications and the Advanced Configuration and Power Interface (''ACPI'') Specification—which are voluntary consensus standards under the Act—and Test Suites to test compliance with these Specifications. The purpose of these Specifications is to simplify and secure platform initialization and firmware boot up operations. UEFI Forum's members are industry-leading technology companies, whose consensus efforts promote business and technological efficiency, improve performance and security, facilitate interoperability between devices, platforms and systems, and enable next-generation technologies to emerge.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–05451 Filed 3–12–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Cerilliant Corporation

By Notice dated November 5, 2013, and published in the **Federal Register** on November 18, 2013, 78 FR 69130, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methaqualone (2565)	I
JWH-250 (6250)	I
SR-18 also known as RCS-8 (7008).	I
XLR11 (7011)	I
JWH-019 (7019)	I
AKB48 (7048)	I
JWH-081 (7081)	I
SR-19 also known as RCS-4 (7104).	I
JWH-122 (7122)	I
UR-144 (7144)	I
AM-2201 (7201)	I
JWH-203 (7203)	I
Parahexyl (7374)	I
2C-T-2 (7385)	I
JWH-398 (7398)	I
5-Methoxy-3,4-methylenedioxy-amphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
Bufotenine (7433)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
2C-D (7508)	I
2C-E (7509)	I
2C-H (7517)	I
2C-I (7518)	I
2C-C (7519)	I
2C-N (7521)	I
2C-P (7524)	I
2C-T-4 (7532)	I
AM-694 (7694)	I
Codeine methylbromide (9070)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Lisdexamfetamine (1205)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexanecarbo nitrile (8603).	II
Alphaprodine (9010)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Remifentanil (9739)	II
Carfentanil (9743)	II
Tapentadol (9780)	II

The company plans to import the listed controlled substances for manufacture and distribution to their research and forensic customers conducting drug testing and analysis.

The DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cerilliant Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05499 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; GE Healthcare

By Notice dated November 2, 2013, and published in the **Federal Register** on November 19, 2013, 78 FR 69447, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, that will be used for the support and manufacture of DaTSCAN (ioflupane I–123) injections for distribution as a radioactive diagnostic imaging agent utilized in the diagnosis of Parkinson's disease.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of GE Healthcare to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05480 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Siegfried USA, LLC

By Notice dated December 23, 2013, and published in the **Federal Register** on January 10, 2014, 79 FR 1887, Siegfried USA, LLC., 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to bulk manufacture APIs for distribution to its customer.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

The DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Siegfried USA, LLC., to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA has investigated Siegfried USA, LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05497 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Johnson Matthey, Inc.

By Notice dated November 4, 2013, and published in the **Federal Register** on November 18, 2013, 78 FR 69130, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials, to be used in the manufacture of bulk controlled substances, for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

In reference to the non-narcotic raw material, no comments or objections have been received. The company plans to import gram amounts to be used as reference standards for distribution to its customers.

The DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Johnson Matthey, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05488 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Cayman Chemical Company

Pursuant to 21 CFR 1301.33(a), this is notice that on December 6, 2013, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by correspondence to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) (25B–NBOMe) (7536).	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) (25C–NBOMe) (7537).	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) (25I–NBOMe) (7538).	I

The company plans to manufacture the listed controlled substances, and distribute those substances to its research and forensics customers for drug testing and analysis.

Any other such applicant, and any person who is presently registered with the DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 12, 2014.

Dated: Signed February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05493 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Johnson Matthey, Inc.

By Notice dated November 5, 2013, and published in the **Federal Register** on November 18, 2013, 78 FR 69132, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Johnson Matthey, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. The DEA has investigated, Johnson Matthey, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05503 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cedarburg Pharmaceuticals, Inc.

By Notice dated October 16, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64017, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Remifentanil (9739)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Cedarburg Pharmaceuticals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. The DEA has investigated Cedarburg Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a) and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05496 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Morton Grove Pharmaceuticals

By Notice dated November 5, 2013, and published in the **Federal Register** on November 18, 2013, 78 FR 69133, Morton Grove Pharmaceuticals, 6451 Main Street, Morton Grove, Illinois 60053–2633, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture a controlled substance for product development.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Morton Grove Pharmaceuticals to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. The DEA has investigated Morton Grove Pharmaceuticals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a) and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05505 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Stepan Company

By Notice dated October 9, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64018, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Stepan Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. The DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05494 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Research Triangle Institute

By Notice dated October 10, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64018, Research Triangle Institute, Hermann Building East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in schedule I.

The company plans to provide small quantities to commercial customers for use in preparing test kits, reagents, and reference standards.

The company plans to bulk manufacture a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. The DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05507 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Nektar Therapeutics

By Notice dated September 27, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64018, Nektar Therapeutics, 1112 Church Street, Huntsville, Alabama 35801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Fentanyl (9801), a basic

class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in support of product development.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Nektar Therapeutics to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. The DEA has investigated Nektar Therapeutics to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: Signed February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05489 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Johnson Matthey, Inc.

By Notice dated November 5, 2013, and published in the **Federal Register** on November 18, 2013, 78 FR 69133, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Johnson Matthey, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. The DEA has investigated, Johnson Matthey, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05500 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Pharmacore, Inc.

By Notice dated September 27, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64017, PharmaCore, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance as active pharmaceutical ingredients (API) for clinical trials.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of PharmaCore, Inc., to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. The DEA has investigated PharmaCore, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05504 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cambrex Charles City, Inc.

By Notice dated September 27, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64017, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II

Drug	Schedule
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers, for dosage form development, for clinical trials, and for use in stability qualification studies.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. The DEA has investigated Cambrex Charles City, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05495 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; GE Healthcare

By Notice dated October 16, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64018, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture a radioactive product to diagnose Parkinson's disease for distribution to its customers.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of GE Healthcare to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. The DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: February 19, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–05484 Filed 3–12–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number: OSHA–2014–0004]

Whistleblower Protection Advisory Committee

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

ACTION: Request for nominations to serve on the Whistleblower Protection Advisory Committee.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for membership on the Whistleblower Protection Advisory Committee (WPAC).

DATES: Nominations for WPAC must be submitted (postmarked, sent, transmitted, or received) by May 12, 2014.

ADDRESSES: You may submit nominations for WPAC, identified by the OSHA Docket No., OSHA–2014–0004, by any of the following methods:

Electronically: Nominations, including attachments, may be submitted electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If your nomination and supporting materials, 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: Submit your nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2014–0004, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). 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., e.t.

Instructions: All nominations and supporting materials for WPAC must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2014–0004). Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations see the ''Public Participation—Submission of Nominations and Access to Docket'' heading in the **SUPPLEMENTARY INFORMATION** section below.

Submissions in response to this **Federal Register** notice, including personal information provided, are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and dates of birth.

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 that Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Meghan Smith, OSHA, Directorate of Whistleblower Protection Programs, U.S. Department of Labor, Room N–4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199; email address *smith.meghan.p@dol.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on WPAC.

Background. The WPAC advises the Secretary of Labor (the Secretary) and the Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) on ways to improve the fairness, efficiency, and transparency of OSHA's whistleblower investigations. WPAC is a continuing advisory body and operates in compliance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and its implementing regulations (see ''Authority and Signature'' section).

WPAC membership.

WPAC is comprised of 12 members, who the Secretary appoints to staggered terms not to exceed two years. OSHA is seeking to fill 12 positions on WPAC that will become vacant on January 1, 2015. Because this is the first time that OSHA is staggering terms for WPAC members, six members will be appointed to one-year terms and six will be appointed to two-year terms. Thereafter, all members will be appointed to two-year terms. The composition of WPAC and categories of new members to be appointed to one-year terms are as follows:

- Two management representatives who are employers or are from employer associations in industries covered by one or more of the whistleblower laws;
- Two labor representatives who are workers or from worker advocacy organizations in industries covered by one or more of the whistleblower laws;
- One member represents the State OSH Plan states; and
- One public representative from colleges, universities, non-partisan think tanks, and/or other entities, that have extensive knowledge and expertise on whistleblower statutes and issues.

The composition of WPAC and categories of new members to be appointed to two-year terms are as follows:

- Two management representatives who are employers or are from employer associations in industries covered by one or more of the whistleblower laws;
- Two labor representatives who are workers or from worker advocacy organizations in industries covered by one or more of the whistleblower laws; and
- Two public representatives from colleges, universities, non-partisan think tanks, and/or other entities, that have extensive knowledge and expertise on whistleblower statutes and issues.

In addition, the committee will also have three Ad hoc/ voting members who are regular government employees from other Federal Government agencies. They will be selected by the Secretary of Labor from Departments that have jurisdiction over statutes with whistleblower provisions, for example, the Securities and Exchange Commission (Sarbanes-Oxley Act), or the Department of Transportation's Federal Aviation Administration (Wendell H. Ford Aviation Investment and Reform Act for the 21st Century), or the Federal Railroad Administration (Federal Railroad Safety Act).

If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve for the remainder of the unexpired term. The committee meets at least two times a year.

Nomination requirements. Any individual or organization may nominate one or more qualified persons for membership. Submissions of nominations must include the following information:

1. The nominee's name, contact information and current occupation or position;
2. The nominee's resume or curriculum vitae, including prior membership on WPAC and other relevant organizations, associations and committees;
3. Category of membership (management, labor, state plan, or academic/extensive whistleblower knowledge) the nominee is qualified to represent;
4. A summary of the nominee's background, experience and qualifications that address the nominee's suitability to serve on WPAC;
5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience and expertise in whistleblowing; and
6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in WPAC meetings, and has no apparent conflicts of interest that would preclude membership on WPAC.

Membership selection. WPAC members will be selected on the basis of their experience, knowledge, and competence in the field of whistleblower protection. The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary in appointing members to serve on WPAC. In selecting WPAC members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

Before candidates are appointed, the U.S. Department of Labor (Department) conducts a basic background check using publically available, Internet-based sources.

The Department is committed to bringing greater diversity of thought, perspective and experience to its advisory committees. In addition, the Department encourages nominees of all races, genders, ages, disabilities and sexual orientations to apply.

Instructions for submitting nominations. Interested individuals may submit nominations and supplemental materials using one of the methods listed in the **ADDRESSES** section. All nominations, attachments and other materials must identify the docket number for this **Federal Register** notice (Docket No. OSHA–2014–0004). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to submit additional materials in reference to an electronic or FAX submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional material must clearly identify your electronic or FAX submission by name and docket number (Docket No. OSHA–2014–0004) so that the materials can be attached to your submission.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

All submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information, such as Social Security numbers and birthdates. Guidance on submitting nominations and materials in response to this **Federal Register** notice is available at *http://www.regulations.gov* and from the OSHA Docket Office.

Access to docket and other materials. To read or download nominations and additional materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2013–0013 at *http://www.regulations.gov.* All submissions are listed in the index of that docket. However, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for information

about materials not available through *http://www.regulations.gov* and for assistance in using the internet to locate submissions.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also is available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), its implementing regulations (41 CFR Part 102–3), chapter 1600 of Department of Labor Management Series 3 (Mar. 17, 2008), Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012), and the Secretary of Labor's authority to administer the whistleblower provisions found in Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c); the Surface Transportation Assistance Act, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; the Energy Reorganization Act, 42 U.S.C. 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. 60129; the Federal Railroad Safety Act, 49 U.S.C. 20109; the National Transit Systems Security Act, 6 U.S.C. 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; Section 1558 of the Affordable Care Act, P.L. 111–148; the Consumer Financial Protection Act of 2010, 12 U.S.C.A. 5567, the Seaman's Protection Act, 46 U.S.C. 2114, Section 402 of the FDA Food Safety Modernization Act, P.L. 111–353, and the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. 30171.

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

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–05438 Filed 3–12–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Domestic Indemnification. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before May 5, 2014. The National Endowment for the Arts is particularly interested in comments which:

—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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting the electronic submissions of responses.

ADDRESSES: Patricia Loiko, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 729, Washington, DC 20506–0001, telephone (202) 682–5541 (this is not a toll-free number), fax (202) 682–5721.

Dated: March 10, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines & Panel Operations.

[FR Doc. 2014–05513 Filed 3–12–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Plan for Generic Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing it is submitting a plan for an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This ICR Plan describes various evaluation forms the NTSB plans to use to obtain feedback from attendees of various NTSB training programs. Feedback from attendees is important to the NTSB in ensuring the NTSB's training courses and programs are helpful to attendees in their places of employment and useful to attendees who participate in NTSB investigations and other related agency matters. This Notice informs the public that it may submit to the NTSB comments concerning the agency's proposed plan for information collection.

DATES: Submit written comments regarding this proposed plan for the collection of information by May 12, 2014.

ADDRESSES: Respondents may submit written comments on the collection of information to the National Transportation Safety Board Training Center, 45065 Riverside Parkway, Ashburn, Virginia 20147.

FOR FURTHER INFORMATION CONTACT: James Pritchert, NTSB Training Officer, at (571) 223–3927.

SUPPLEMENTARY INFORMATION: In accordance with OMB regulations that require this Notice for proposed ICRs, as well as OMB guidance concerning generic approval of plans for information collections, the NTSB herein notifies the public that it may submit comments on this proposed ICR Plan to the NTSB. 5 CFR 1320.10(a). Section 1320.10(a) requires this ''notice directing requests for information, including copies of the proposed collection of information and supporting documentation, to the [NTSB].'' Pursuant to § 1320.10(a), the NTSB will provide a copy of this notice to OMB.

A. NTSB Training Center Evaluation Forms Are Appropriate for Generic Approval

On May 28, 2010, the Administrator, Office of Information and Regulatory Affairs (OIRA), OMB, issued a memorandum to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, providing instructions concerning how agencies can obtain generic OMB clearances for information collections in certain circumstances. *Paperwork Reduction Act—Generic Clearances,* available at *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf.* The memorandum states as follows concerning the appropriateness of obtaining such clearances:

> A generic ICR is a request for OMB approval of a plan for conducting more than one information collection using very similar methods when (1) the need for and the overall practical utility of the data collection can be evaluated in advance, as part of the review of the proposed plan, but (2) the agency cannot determine the details of the specific individual collections until a later time.

The NTSB's desire to obtain information immediately following a training course will assist the NTSB Training Center in developing courses to achieve the NTSB's objective of improving investigators' and transportation industry peers' accident investigation theory, practices, and techniques. The mission of the NTSB Training Center, in accordance with 49 U.S.C. 1113(b)(1)(I), is to promote safe transport by:

- Ensuring and improving the quality of accident investigation through critical thought, instruction, and research;
- Communicating lessons learned, fostering the exchange of new ideas and new experience, and advocating operational excellence;
- Providing a modern platform for accident reconstruction and evaluation; and
- Utilizing its high-quality training resources to facilitate family assistance and first responder programs, sister agency instruction, and other compatible federal activity.

In administering training courses designed to achieve these objectives, the NTSB seeks to maintain a standard of excellence. The NTSB's goal of providing materials, instructors, methods of instruction, and facility arrangements that are a worthy expenditure of Federal funds will require the NTSB to obtain feedback on the training courses from attendees.

This type of information collection is appropriate for generic approval under the OIRA Administrator's guidance. The NTSB periodically changes the identification numbers and subject matter addressed in NTSB training courses. Such variance renders generic approval appropriate. By distributing evaluation forms, the NTSB will gather feedback concerning whether attendees found the instructor knowledgeable and helpful; whether the course materials were appropriate; the location and course facilities; the ''case studies'' discussed in the course; and other similar topics. Each course evaluation form will include some course-specific questions. Responses to such evaluations will assist the NTSB in ensuring its courses work to fulfill the goals listed above.

In 2014, the NTSB will offer the following training courses, about which the NTSB seeks approval for evaluation forms: Accident Investigation Orientation (RPH301); Aircraft Accident Investigation (AS101); Aircraft Accident Investigation for Aviation Professionals (AS 301); Cognitive Interviewing Series (IM401S); Family Assistance (TDA301); Investigating Human Fatigue Factors (IM303); Managing Communications During an Aircraft Accident or Incident (PA302); Managing Communications Following a Major Transportation Accident (PA303); Managing Transportation Mass Fatalities (TDA406); Marine Accident Investigation (MS101); Mass Fatalities for Medicolegal Professionals (TDA403); and Rotorcraft Accident Investigation (AS102). The NTSB may offer additional courses in upcoming years, such as Survival Factors in Aviation Accidents (AS302). In response to previous feedback, requests for training in specific areas, and other considerations, the NTSB will likely add or remove classes from this list in the coming years.

Consistent with the OIRA Administrator's guidance concerning generic approvals, the NTSB will not be able to finalize draft evaluations specific to each course until the NTSB offers the course. These types of questions are unique to the specific course, and impossible to know prior to the offering of the course. Overall, the types of information the NTSB will solicit in its Training Center course evaluations is appropriate for a generic approval for the information collection.

B. Supporting Statement

The OIRA Administrator's memorandum instructs agencies to provide specific information in the supporting statements describing the information collections. In particular, the supporting statements should include the following:

- The method of collection and, if statistical methods will be used, a discussion of the statistical methodology;
- the category (or categories) of respondents;
- the estimated ''burden cap,'' i.e., the maximum number of burden hours (per year) for the specific information collections, and against which burden will be charged for each collection actually used;
- the agency's plans for how it will use the information collected;
- the agency's plans to obtain public input regarding the specific information collections (i.e., consultation); and
- the agency's internal procedures to ensure that the specific collections comply with the PRA, applicable regulations, and the terms of the generic clearance.

Id. at 2.

1. Method of Collection

The NTSB will collect the information by transmitting the evaluation form to attendees of each Training Center course. Depending on the circumstances, such transmission may occur via hand delivery, electronic mail, postal mail, or express mail, or a combination of these methods. Respondents will be provided instructions concerning how to return questionnaires to the Training Center.

The NTSB will not use statistical methodology in reaching any conclusions based on the evaluations. Instead, the NTSB merely will note the total number of respondents in any documents in which it discusses the evaluations.

Respondents' completion of the evaluations is voluntary, and the NTSB generally will not contact them more than once to request completion of the evaluation.

2. Category of Respondents

In its evaluation forms, the NTSB will generally seek information only from attendees of each course. The NTSB will have the contact information for each attendee, because such information is required when registering for Training Center courses.

3. Maximum Burden Hours

The NTSB plans to distribute the evaluations to attendees of each Training Center course. The NTSB offers 12 courses per year including multiple iterations. Among all courses, the NTSB estimates a total of 600 non-Government attendees complete courses in any given year. As a result, the NTSB estimates it will distribute approximately 600 Training Center evaluation forms each year. Each evaluation form will take approximately 11 minutes to complete.

The NTSB seeks to emphasize these estimations are approximate, as they are depend on the number of courses the NTSB offers in the Training Center. Some courses may be cancelled due to low registration. In addition, only Government employees may choose to attend other courses. As a result, the NTSB can only provide an approximate estimate of the number of attendees per year.

4. Use of the Information Collected

Feedback from attendees of NTSB Training Center courses is extremely important to the NTSB. The NTSB plans its course offerings based on the level of interest from potential attendees and on the degree to which attendees have found useful the information they learned during such courses. As a result, evaluations of NTSB Training Center courses will influence future course offerings. The NTSB will rely upon the provision of completed course evaluations to assist with the planning of course offerings.

5. Public Input Regarding the Information Collected

The NTSB does not generally obtain public input concerning the scope of, or specific questions on, NTSB Training Center evaluation forms.

6. Internal Procedures

Lastly, the OIRA Administrator's memorandum describing generic clearances recommends agencies describe the procedures it will undertake to ensure information collections to which the generic clearance applies will comply with the Paperwork Reduction Act, applicable regulations, and the terms provided in the generic clearance. The NTSB Office of General Counsel plans to provide internal guidance to agency personnel who offer courses and distribute course evaluations at the NTSB Training Center. Such guidance will include this publication, as well as the OIRA Administrator's memorandum discussing generic clearances, upon OMB approval of the clearance. The internal guidance will include specific instructions concerning use of evaluation forms, and explain the applicable provisions of the Paperwork Reduction Act and its implementing regulations.

C. Description of Burden

The NTSB has carefully reviewed previous questionnaires it has used to obtain information from attendees of courses the NTSB Training Center offers. The NTSB assures the public that these questionnaires have used plain, coherent, and unambiguous terminology in its requests for feedback. In addition, the questionnaires are not duplicative of other agencies' collections of information, because the NTSB maintains unique authority to offer such courses concerning investigations of transportation events. 49 U.S.C. 1113(b)(1)(I).

In general, the NTSB believes the evaluation forms will impose a minimal burden on respondents: As indicated above, the NTSB estimates that each respondent will spend approximately 11 minutes in completing the evaluation. The NTSB estimates that a maximum of 240 respondents per year would complete an evaluation. Although the NTSB may distribute evaluations to perhaps as many as 600 people, historic response rates indicate only 40 percent of the evaluations will be returned completed. However, the NTSB again notes this number will vary, given the changes and demand for course offerings at the NTSB Training Center.

D. Request for Comments

In accordance with 44 U.S.C. 3506(c)(2)(A), the NTSB seeks feedback from the public concerning this proposed plan for information collection. In particular, the NTSB asks the public to evaluate whether the proposed collection of information is necessary; to assess the accuracy of the NTSB's burden estimate; to comment on how to enhance the quality, utility, and clarity of the information to be collected; and to comment on how the NTSB might minimize the burden of the collection of information.

The NTSB will carefully consider all feedback it receives in response to this notice. As described above, obtaining the information the NTSB seeks on these evaluations in a timely manner is important to course offerings at the NTSB Training Center; therefore, obtaining approval from OIRA for these collections of information on a generic basis is a priority for the NTSB.

Deborah A.P. Hersman,

Chairman.

[FR Doc. 2014–05531 Filed 3–12–14; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443; NRC–2014–0043]

License Exemption Request for NextEra Energy Seabrook, LLC; Seabrook Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a June 25, 2013, request from NextEra Energy, Seabrook, LLC, requesting an exemption for the use of a different fuel rod cladding material (Optimized ZIRLO™).

ADDRESSES: Please refer to Docket ID NRC–2014–0043 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0043. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at

the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

I. Background

NextEra Energy Seabrook, LLC (NextEra or the licensee) is the holder of Facility Operating License No. NPF–86, which authorizes operation of the Seabrook Station, Unit 1 (Seabrook). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of a pressurized-water reactor located in Rockingham County in New Hampshire.

II. Request/Action

Pursuant to § 50.12, of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' the licensee has, by letter dated June 25, 2013 (ADAMS Accession No. ML13183A056), requested an exemption from specific requirements of 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' and 10 CFR Part 50, Appendix K, ''ECCS Evaluation Models,'' to allow the use of fuel rod cladding with optimized ZIRLO™ alloy for future reload applications. The regulations in 10 CFR 50.46 contain acceptance criteria for the ECCS for reactors fueled with zircaloy or ZIRLO™ fuel rod cladding material. In addition, Appendix K to 10 CFR Part 50 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 Baker-Just equation assumes the use of a zirconium alloy, which is a material different from Optimized ZIRLO™. The licensee requested the exemption because these regulations do not have provisions for the use of fuel rod cladding material other than zircaloy or ZIRLO™. Because the material specifications of Optimized ZIRLO™ differ from the specifications for zircaloy or ZIRLO™, a plant-specific exemption is required to support the reload applications for Seabrook.

The exemption request relates solely to the cladding material specified in these regulations (i.e., fuel rods with Zircaloy or ZIRLO™ cladding material). This exemption would provide for the application of the acceptance criteria of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, to fuel assembly designs using Optimized ZIRLO™ fuel rod cladding material. In its letter dated June 25, 2013, the licensee indicated that it was not seeking an exemption from the acceptance and analytical criteria of these regulations. The intent of the request is to allow the use of the criteria set forth in these regulations for application to the Optimized ZIRLO™ fuel rod cladding material.

III. 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 public health or 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 specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

A. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), 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 ECCS performance. The regulations in 10 CFR 50.46 and Appendix K are not directly applicable to Optimized ZIRLO™, even though the evaluations described in the following sections of this exemption show that the intent of the regulation is met. Therefore, since the underlying purposes of 10 CFR 50.46 and 10 CFR Part 50, Appendix K are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

B. Authorized by Law

This exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material for future reload applications at Seabrook. 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 the licensee's proposed exemption would 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.

C. No Undue Risk to Public Health and Safety

Section 10 CFR 50.46 requires that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an ECCS that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents (LOCAs) conforms to the criteria set forth in paragraph (b) of this section. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for adequate ECCS performance. As previously documented in the NRC staff's safety evaluation dated June 10, 2005 (ADAMS Accession No. ML051670395), of topical reports submitted by Westinghouse, and subject to compliance with the specific conditions of approval established in the safety evaluation, the NRC staff found that Westinghouse demonstrated the applicability of these ECCS acceptance criteria to Optimized ZIRLO™. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ (see WCAP–14342–A & CENPD–404–NP–A at ADAMS Accession No. ML062080569) demonstrate an acceptable retention of postquench ductility up to 10 CFR 50.46 limits of 2200 degrees Fahrenheit and 17 percent equivalent clad reacted. Furthermore, the NRC staff concluded that oxidation measurements provided by the licensee by letter LTR–NRC–07–58 from Westinghouse to the NRC, ''SER Compliance with WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, 'Optimized ZIRLO™,' '' dated November 6, 2007 (public version is at ADAMS Accession No. ML073130560), illustrate that oxide thickness and associated hydrogen pickup for Optimized ZIRLO™ at any given burnup would be less than both zircaloy-4 and ZIRLO™. Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain better postquench ductility than ZIRLO™. This finding is further supported by an ongoing LOCA research program at Argonne National Laboratory, which has identified a strong correlation between cladding hydrogen content (caused by in-service corrosion) and postquench ductility.

In addition, the provisions of 10 CFR 50.46 require the licensee to periodically evaluate the performance of the ECCS, using currently approved LOCA models and methods, to ensure that the fuel rods will continue to satisfy

the 10 CFR 50.46 acceptance criteria. In its letter dated June 25, 2013, the licensee stated that for LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard ZIRLO™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will demonstrate that the acceptance criteria of 10 CFR 50.46 have been satisfied. Granting the exemption to allow the licensee to use Optimized ZIRLO™ fuel rod cladding material in addition to the current mix of fuel rods does not diminish this requirement of periodic evaluation of ECCS performance. Thus, the underlying purpose of the rule will continue to be achieved for Seabrook.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy release, hydrogen concentration, 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 this provision of the rule would not permit use of the equation for the Optimized ZIRLO™ fuel rod cladding material for determining acceptable fuel performance. However, the NRC staff previously found that metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (see Appendix B of WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, the NRC staff determined that the application of Appendix K, Paragraph I.A.5 is not necessary to achieve the underlying purpose of the rule in these circumstances. Since these evaluations demonstrate that the underlying purpose of the rule will be met, there will be no undue risk to the public health and safety.

D. Consistent With the Common Defense and Security

The licensee's exemption request is only to allow the application of the aforementioned regulations to an improved fuel rod cladding material. In its letter dated June 25, 2013, the licensee stated that all the requirements and acceptance criteria will be maintained. The licensee is required to handle and control special nuclear material in these assemblies in accordance with its approved procedures. This change to the plant configuration is not related to security issues. Therefore, the NRC staff determined that this exemption does not impact common defense and security.

E. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20, and the granting of this exemption involves: (i) No significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request. The basis for the NRC staff's determination is discussed as follows with an evaluation against each of the requirements in 10 CFR 51.22(c)(9).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated the issue of no significant hazards consideration, using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. The NRC approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A ''Optimized ZIRLO™,'' prepared by Westinghouse, addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as the currently licensed ZIRLO®. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel rod cladding material will continue to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The use of Optimized ZIRLO™ fuel rod cladding material will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO®. Therefore, the Optimized ZIRLO™ fuel rod cladding material will perform similarly to those fabricated from standard ZIRLO®, thus precluding the possibility of the fuel cladding becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety, because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO®. Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO® for all normal operating and accident scenarios, including both LOCA and non-LOCA scenarios. For LOCA scenarios, where the slight difference in the Optimized ZIRLO™ material properties, relative to standard ZIRLO® could have some impact on the overall accident scenario, plant-specific LOCA analyses using the Optimized ZIRLO™ properties demonstrate that the acceptance criteria of 10 CFR 50.46 have been satisfied.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff concludes that the proposed exemption presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified (i.e., satisfies the provision of 10 CFR 51.22(c)(9)(i)).

Requirements in 10 CFR 51.22(c)(9)(ii)

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material in the reactors. Optimized ZIRLO™ has essentially the same properties as the currently licensed ZIRLO®. The use of the Optimized ZIRLO™ fuel rod cladding material will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the provision of 10 CFR 51.22(c)(9)(ii) is satisfied.

Requirements in 10 CFR 51.22(c)(9)(iii)

The proposed exemption would allow the use of the Optimized ZIRLO™ fuel rod cladding material in the reactors. Optimized ZIRLO™ has essentially the same properties as the currently licensed ZIRLO®. The use of the Optimized ZIRLO™ fuel rod cladding material will not significantly increase individual occupational radiation exposure, or significantly increase cumulative occupational radiation exposure. Therefore, the provision of 10 CFR 51.22(c)(9)(iii) is satisfied.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's proposed issuance of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, 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 NextEra an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50, to allow the use of Optimized ZIRLO™ fuel rod cladding material at Seabrook. As stated above, this exemption relates solely to the cladding material specified in these regulations.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of February 2014.

For the Nuclear Regulatory Commission.

Michele Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–05498 Filed 3–12–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–21 and R2014–6; Order No. 2009]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting the addition of PHI Acquisitions, Inc. to the market dominant product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 27, 2014. *Reply comments are due:* April 3, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Brian Corcoran, Acting General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On March 5, 2014, the Postal Service filed a request pursuant to 39 U.S.C. 3622 and 3642, as well as 39 CFR 3010 and 3020, *et seq.,* to add a PHI Acquisitions, Inc. (PHI) negotiated service agreement to the market dominant product list.[1]

Request. In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a copy of Governors' Resolution No. 14–02, authorizing a negotiated service agreement with PHI;
- Attachment B—a copy of the contract;
- Attachment C—proposed descriptive language changes to the Mail Classification Schedule;
- Attachment D—a proposed data collection plan;
- Attachment E—a Statement of Supporting Justification as required by 39 CFR 3020.32, which the Postal Service also is using to satisfy the requirements of 39 CFR 3010.42(b)–(e); and
- Attachment F—a financial model, which the Postal Service believes demonstrates that the agreement will have a net value of approximately $10.748 million.[2]

In its Request, the Postal Service identifies Bruce Allen, Manager, Pricing Innovation as the official able to provide responses to queries from the Commission. In his Statement of Supporting Justification, Mr. Allen reviews the factors and objectives of section 3622(b) and (c) and concludes, *inter alia,* that the agreement will provide an incentive for profitable mail; will enhance the financial position of the Postal Service; will increase mail volume; will not imperil the ability of Standard Mail to cover its attributable costs; and promotes the use of intelligent mail. *Id.,* Attachment E at 1–3.

The Postal Service believes that the PHI negotiated service agreement conforms to the policies of the Postal Accountability and Enhancement Act and meets the statutory standards supporting the desirability of this special classification under 39 U.S.C. 3622(c)(10). Request at 3. In particular, the Postal Service believes the agreement has the potential to enhance the Postal Service's financial position, and it will not cause unreasonable harm to the marketplace. *Id.*

Related contract. The Postal Service indicates that the agreement is designed to increase the total contribution the Postal Service receives from PHI Standard Mail Carrier Route Flats volume and revenue by generating new, incremental Standard Mail Carrier Route Flats volume and revenue. *Id.* at 6–7. The Postal Service describes the agreement and its four main components: (1) A volume threshold, (2) a volume threshold adjustment, (3) a volume commitment, and (4) rebates on qualifying Standard Mail Carrier Route Flats volume.

Specifically, the volume threshold is based on the amount of PHI's total volume for all four categories of Carrier Route Flats (Saturation, High Density Plus, High Density, and Basic), as well as Flats Sequencing System (''FSS'') Flats with a full-service IMb barcode.[3] *Id.* The baseline for the volume threshold is PHI's total volume for these categories over the four quarters from October 1, 2012 through September 30, 2013. For the first year of the agreement, the threshold is the baseline volume. *Id.* For years two through five of the agreement, the threshold is the previous year's annual volume growth times the adjustment factor plus the previous year's volume threshold. *Id.* at 7–8.

[1] Notice of the United States Postal Service of Filing Contract and Supporting Data and Request to Add PHI Acquisitions, Inc. Negotiated Service Agreement to the Market-Dominant Product List, March 5, 2014 (Request).

[2] This Attachment is also referred to as ''Attachment X'' in the Request. Request at 12.

[3] FSS Flats are included in the event FSS Flats become a category or sub-category during the term of the negotiated service agreement. *Id.* at 7.

The volume threshold adjustment is intended to ensure that, after rebates, total volume and contribution from PHI's overall business will continue to grow and thus is adjusted upward annually. *Id.* The adjustment factor is based on the incremental response rate for the incremental volume and the aggregate number of catalogs mailed annually to each new buyer. *Id.* The agreement also contains a volume commitment, equal to the volume threshold. If the amount of PHI's total volume from eligible Standard Mail Carrier Route Flats in the first year of the contract is less than the threshold, PHI must pay a $100,000 penalty to the Postal Service. *Id.* at 9.

If PHI exceeds the quarterly volume threshold in any quarter, it will earn rebates on its qualifying Standard Mail Carrier Route Flats volume. The rebates for PHI's qualifying mail will be determined based on the volume increase above the quarterly volume threshold. *Id.* For volume increases up to 10 percent above the quarterly threshold, PHI will receive a 10 percent rebate from published prices for all qualifying mail. *Id.* For volume increases between 10.01 percent and 18 percent above the quarterly threshold, PHI will receive a 15 percent rebate from published prices for all qualifying mail. *Id.* For volume increases over 18 percent above the quarterly threshold, PHI will receive a 20 percent rebate from published prices for all qualifying mail. *Id.*

The Postal Service also describes several other elements of the agreement: (1) An acquisition clause, which accounts for the acquisition of another company or catalog title; (2) a divestiture clause, which accounts for decreased mailing activity due to the divestiture of a catalog title; (3) a termination clause, which allows either party to end the agreement with 30 days written notice to the other party, based on certain conditions, including a package volume commitment by PHI; (4) an option to renew clause, which allows the parties to renew the agreement for up to five additional years if specified criteria is met; and (5) an incentive programs clause, which allows PHI to participate in Postal Service incentive programs while preventing PHI from double-dipping on incentives. *Id.* at 9–10.

The Postal Service indicates that the contract will become effective July 1, 2014 or on a date agreed to by the parties. *Id.* at 1.[4] The agreement will expire five years from the effective date. *Id.,* Attachments A and B.

Similarly situated mailers. With respect to potential similarly situated mailers, the Postal Service states that the design imperative, to generate additional contributions, and the basic structure of the agreement described in the Request, will guide the Postal Service in the negotiation of similar agreements as well as those that are substantially different. *Id.* at 10–11. It notes that in assessing the desirability of the agreement, the Postal Service believes that the defining characteristics of PHI are its size, its large but stagnant catalog mail volume history, and the availability of company mail and catalog data. *Id.* at 11. In offering a similar agreement to similarly situated customers, the Postal Service will look for these characteristics and for the customer to demonstrate that it has the resources and infrastructure to add significant incremental catalog volume. *Id.*

Notice. The Postal Service represents that it will inform customers of the new classification changes and associated price effects through a notice published in the **Federal Register**. *Id.* at 1.

II. Notice of Filing

The Commission establishes Docket Nos. MC2014–21 and R2014–6 for consideration of the Request pertaining to the proposed new product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filing in the captioned dockets are consistent with the policies of 39 U.S.C. 3622 and 3642 as well as 39 CFR parts 3010 and 3020. Comments are due no later than March 27, 2014. Reply comments to initial comments are due no later than April 3, 2014. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints John P. Klingenberg to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014–21 and R2014–6 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than March 27, 2014.

4. Reply comments may be filed no later than April 3, 2014.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2014–05448 Filed 3–12–14; 8:45 am]

BILLING CODE 7710–FW–P

[4] The agreement states the effective date ''shall be the day after the Commission issues all necessary regulatory approval.'' *Id.,* Attachment B at 12.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 433, OMB Control No. 3235–0617, SEC File No. 270–558.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that a company can make to investors during a registered offering of its securities, while maintaining a high level of investor protection. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.3 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 respondents approximately 1.25 times a year for a total of 3,633 responses. We estimate that 25% of the 1.3 burden hours per response (0.32 hours) is prepared by the company for total annual reporting burden of 1,163 hours (0.32 hours × 3,633 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 7, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05461 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form CB; OMB Control No. 3235–0518, SEC File No. 270–457.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form CB (17 CFR 239.800) is a Document filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) (17 CFR 240.13e–4(h)(8)) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c) (17 CFR 240.14d–1(c)). Form CB takes approximately 0.5 hours per response to prepare and is filed by approximately 200 respondents annually. We estimate that 25% of the 0.5 hours per response (0.125 hours) is prepared by the respondent for an annual reporting burden of 25 hours (0.125 hours per response × 200 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 7, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05462 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 173, OMB Control No. 3235–0618, SEC File No. 270–557.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Securities Act Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). A Rule 173 notice must be provided by underwriter or dealer to each investor who purchased securities from the underwriter or dealer. The Rule 173 notice is not publicly available. We estimate that it takes approximately 0.01 hour per response to provide the information required under Rule 173 and that the information is filed by approximately 5,338 respondents approximately 43,546 times a year for a total of 232,448,548 responses. We estimate that the total annual reporting burden for Rule 173 is 2,324,485 hours (0.01 hours per response × 232,448,548 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 7, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05460 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, D.C. 20549–0213.

Extension:

Rule 163, OMB Control No. 3235–0619, SEC File No. 270–556.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 163 (17 CFR 230.163) provides an exemption from Section 5(c) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain communications by or on behalf of a well-known seasoned issuer. The information filed under Rule 163 is publicly available. We estimate that it takes approximately 0.24 burden hours per response to provide the information required under Rule 163 and that the information is filed by approximately 53 respondents for a total annual reporting burden of 13 hours. We estimate that 25% of 0.24 hours per response (0.06 hours) is prepared by the respondent for a total annual burden of 3 hours (0.06 hours per response × 53 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 7, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05459 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17a–22; SEC File No. 270–202, OMB Control No. 3235–0196.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–22 (17 CFR 240.17a–22) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*).

Rule 17a–22 requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship, such as pledges, transfer agents, or self-regulatory organizations. Such materials include manuals, notices, circulars, bulletins, lists, and periodicals. The filings with the Commission must be made within ten days after the materials are issued or made generally available. When the Commission is not the clearing agency's appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 are registered clearing agencies. The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies but on average there are approximately 200 filings per year per active clearing agency. There are seven active registered clearing agencies. The Commission staff estimates that each response requires approximately .25 hours (fifteen minutes), which represents the time it takes for a staff person at the clearing agency to properly identify a document subject to the rule, print and makes copies, and mail that document to the Commission. Thus, the total annual burden for all active clearing agencies is 350 hours (7 clearing agencies multiplied by 200 filings per clearing agency multiplied by .25 hours) and a total of 50 hours (1400 responses multiplied by .25 hours, divided by 7 active clearing agencies) per year are expended by each respondent to comply with the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F. Street, NE Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05458 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–10, OMB Control No. 3235–0563, SEC File No. 270–507.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 17(a) of the Investment Company Act of 1940 (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[1] Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers.[2] Rule 17a–10 (17 CFR 270.17a–10) permits (i) a subadviser [3] of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio.[4] Section 17(a) of the Investment Company Act of 1940 (the ''Act''), generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Section 2(a)(3) of the Act defines ''affiliated person'' of a fund to include its investment advisers. Rule 17a–10 permits (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but that are affiliated persons of a fund that it does advise (e.g., other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.

To qualify for the exemptions in rule 17a–10, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction. In addition, the advisory contracts of the subadviser entering into the transaction, and any subadviser that is advising the purchasing portion of the fund, must prohibit the subadvisers from consulting with each other concerning securities transactions of the fund, and limit their responsibility to providing advice with respect to discrete portions of the fund's portfolio. This requirement regarding the prohibitions and limitations in advisory contracts of subadvisors relying on the rule constitutes a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').[5]

The staff assumes that all existing funds with subadvisory contracts amended those contracts to comply with the adoption of rule 17a–10 in 2003, which conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[6] However, the staff assumes that all newly formed subadvised funds, and funds that enter into new contracts with subadvisers, will incur the one-time burden by amending their contracts to add the terms required by the rule.

Based on an analysis of fund filings, the staff estimates that approximately 775 fund portfolios enter into new subadvisory agreements each year. Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 12d3–1, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally among all four rules. Therefore, we estimate that the burden allocated to rule 17a–10 for this contract change would be 0.75 hours.[7] Assuming that all 775 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 581 burden hours annually, with an associated cost of approximately $220,199.[8]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–10. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

[1] 15 U.S.C. 80a–17(a).

[2] 15 U.S.C. 80a–2(a)(3)(E).

[3] As defined in rule 17a–10(b)(2). 17 CFR 270.17a–10(b)(2).

[4] 17 CFR 270.17a–10(a)(2).

[5] 44 U.S.C. 3501.

[6] Transactions of Investment Companies With Portfolio and Subadviser Affiliates, Investment Company Act Release No. 25888 (Jan. 14, 2003) [68 FR 3153, (Jan. 22, 2003)]. We assume that funds formed after 2003 that intended to rely on rule 17a–10 would have included the required provision as a standard element in their initial subadvisory contracts.

[7] This estimate is based on the following calculation: 3 hours ÷ 4 rules = 0.75 hours.

[8] These estimates are based on the following calculations: (0.75 hours × 775 portfolios = 581 burden hours); ($379 per hour × 581 hours = $220,199 total cost). The Commission's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $379. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2012.

Dated: March 7, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05457 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30976; File No. 812–14208]

DFA Investment Dimensions Group Inc., et al.; Notice of Application

March 7, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; pursuant to section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; pursuant to sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: DFA Investment Dimensions Group Inc. (''DFAIDG''), Dimensional Emerging Markets Value Fund (''DEM''), Dimensional Investment Group Inc. (''DIG''), The DFA Investment Trust Company (''DFAITC,'' and together with DFAIDG, DEM, and DIG, the ''Trusts'') and Dimensional Fund Advisors LP (''Adviser'').

Filing Dates: The application was filed on September 5, 2013, and amended on February 18, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 6300 Bee Cave Road, Building One, Austin, TX 78746.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Senior Counsel, at (202) 551–6882 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each of DFAIDG and DIG is organized as a Maryland corporation, and each of DFAITC and DEM is organized as a Delaware statutory trust. Each Trust, other than DEM, consists of multiple series (each series or DEM, a ''Fund,'' and together, the ''Funds''). One of the Funds, the DFA Short Term Investment Fund (the ''Short Term Fund''), is operated as a money market fund in reliance on rule 2a–7 under the Act (the Short Term Fund and any future Funds that rely on rule 2a–7 are the ''Money Market Funds''). The Funds are registered with the Commission as open-end management investment companies. The Adviser, a Delaware limited partnership, serves as investment adviser to the Funds, and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[1]

2. At any particular time, while some Funds enter into repurchase agreements, or invest their cash balances in money market funds or other short-term instruments, other Funds may need to borrow money for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. The Trusts currently are parties to two credit facilities (the ''Loan Agreements'') that generally are renegotiated annually. The Loan Agreements each provide for $500 million, respectively, in uncommitted lines of credit to the participating Funds, and are furnished by the Funds' two custodians.

3. Applicants state that, generally, when a Fund borrows money under the Loan Agreements, it pays interest on the loan at a rate that is typically higher than the rate that is earned by other (non-borrowing) Funds on investments in repurchase agreements, money market funds, and other short-term instruments of the same maturity as the bank loan. Applicants assert that this differential represents the profit earned by the lender on loans and is not attributable to any material difference in the credit quality or risk of such transactions.

4. The Trusts seek to enter into master interfund lending agreements (''Interfund Lending Agreements'') with each other on behalf of the Funds that would permit each Fund to lend money directly to and borrow directly from other Funds through a credit facility for temporary purposes (an ''Interfund Loan''). It is not anticipated that the Money Market Funds will participate as borrowers in the interfund lending facility. Applicants state that the proposed credit facility is expected to both reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish and maintain committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up

[1] Applicants request that the relief also apply to any other open-end registered management investment company advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (such entity included in the term ''Adviser'') that currently, or in the future, is part of the same ''group of investment companies'' as the Trusts, as defined in section 12(d)(1)(G)(ii) of the Act (included in the term ''Trusts''). All entities that currently intend to rely on the requested order have been named as applicants. Any other entity that relies on the requested order in the future will comply with the terms and conditions set forth in the application. Any other Adviser will be registered as an investment adviser under the Advisers Act. All references to the term ''Adviser'' herein include successors-in-interest to the Adviser. Successors-in-interest are limited to any entity resulting from a reorganization of the Adviser into another jurisdiction or a change in the type of business organization.

to three days (or longer for certain foreign transactions). However, redemption requests normally are effected immediately. The proposed credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also anticipate that a Fund could use the proposed credit facility when a sale of securities ''fails'' due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Alternatively, the Fund could ''fail'' on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund. Use of the proposed credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or money market funds. Thus, applicants assert that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest or best (after giving effect to factors such as the credit quality of the counterparty) rate available to a lending Fund from investment in overnight repurchase agreements with counterparties approved by the Fund or its Adviser. The Bank Loan Rate for any day would be calculated by the Interfund Lending Committee, as defined below, each day an Interfund Loan is made according to a formula established by each Fund's board of trustees (the ''Trustees'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.,* federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Trustees. In addition, each Fund's Trustees would periodically review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. Certain members of the Adviser's fund administration personnel and money market portfolio managers or analysts (the ''Interfund Lending Committee'') will administer the credit facility. No portfolio manager of any Fund (other than a portfolio manager of a Money Market Fund) will serve as a member of the Interfund Lending Committee. On any day on which a Fund intends to borrow money, the Interfund Lending Committee would make an Interfund Loan from a lending Fund to a borrowing Fund only if the Interfund Loan Rate is: (i) More favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any money market fund in which the lending Fund could otherwise invest, and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

10. Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender; alternatively, the portfolio manager could provide instructions from time to time as to when the Fund wishes to participate as a borrower or lender. The Interfund Lending Committee on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Committee would allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds (other than a Money Market Fund portfolio manager acting in his or her capacity as a member of the Interfund Lending Committee). All allocations made by the Interfund Lending Committee will require the approval of at least one member of the Interfund Lending Committee who is a high level employee and not a Money Market Fund portfolio manager. Applicants anticipate that there typically will be far more available uninvested cash each day than borrowing demand. Therefore, after the Interfund Lending Committee has allocated cash for Interfund Loans, the Interfund Lending Committee will invest any remaining cash in accordance with the standing instructions of the portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds.

11. The Interfund Lending Committee would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Committee believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Trustees, including a majority of Trustees who are not ''interested persons'' of the Fund, as that term is defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. The Adviser would: (a) Monitor the Interfund Loan Rate and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Trustees concerning any transactions by the Funds under the proposed credit facility and the Interfund Loan Rate charged.

13. The Adviser, through the Interfund Lending Committee, would administer the proposed credit facility as a disinterested fiduciary as part of its duties under the investment management contract with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the proposed credit facility. The Adviser may collect standard pricing, record keeping, bookkeeping and accounting fees associated with the transfer of cash and/or securities in connection with repurchase and lending transactions generally, including transactions effected through the proposed credit facility. Such fees would be no higher than those applicable for comparable bank loan transactions.

14. No Fund may participate in the proposed credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information

concerning the credit facility in its prospectus and/or statement of additional information; and (c) the Fund's participation in the credit facility is consistent with its investment objectives and limitations and organizational documents.

15. In connection with the credit facility, applicants request an order under section 6(c) of the Act exempting them from the provisions of sections 18(f) and 21(b) of the Act; under section 12(d)(1)(J) of the Act exempting them from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or affiliated person of an affiliated person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines ''control'' as the ''power to exercise a controlling influence over the management or policies of a company,'' but excludes circumstances in which ''such power is solely the result of an official position with such company.'' Applicants state that the Funds may be under common control by virtue of having common investment advisers and/or by having common Trustees and officers.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].'' Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) The Adviser, through the Interfund Lending Committee, would administer the program as a disinterested fiduciary as part of its duties under the investment management contract with each Fund; (b) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a money market fund; (c) the Interfund Loans would not involve a significantly greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could otherwise obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid some up-front commitment fees associated with committed lines of credit. Moreover, applicants assert that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1). Applicants also state that any pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants submit that the requested exemptions from sections 17(a)(1), 17(a)(2) and 12(d)(1) are appropriate in the public interest, and consistent with the protection of investors and policies and purposes of the Act for all the reasons set forth above in support of their request for relief from Sections 17(a)(3) and 21(b). Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investments. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or their shareholders, and that the Adviser will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) only to the

limited extent necessary to permit a Fund to lend to or borrow directly from other Funds. The Funds would remain subject to the requirement of section 18(f)(l) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, Applicants submit that to allow the Funds to borrow directly from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(l).

8. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any joint transaction in which the investment company participates, unless, upon application, the transaction has been approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

9. Applicants assert that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants assert that the proposed credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants assert that each Fund's participation in the proposed credit facility would be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Interfund Lending Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) More favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any money market fund in which the lending Fund could otherwise invest; and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than the interest rate of any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all of its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to obtain cash sufficient to repay such Interfund Loan, through either the sale of portfolio securities or the net sales of the Fund's shares, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives and limitations and organizational documents.

12. The Interfund Lending Committee will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds (other than a Money Market Fund portfolio manager acting in his or her capacity as a member of the Interfund Lending Committee). All allocations will require the approval of at least one member of the Interfund Lending Committee who is a high level employee and is not a Money Market Fund portfolio manager. The Interfund Lending Committee will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that a Money Market Fund portfolio manager on the Interfund Lending Committee has access to loan demand data). The Interfund Lending Committee will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions of the portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds.

13. The Interfund Lending Committee will monitor the Interfund Loan Rate and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees of each Fund concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Trustees of each Fund, including a majority of the Independent Trustees, will:

(a) Review, no less frequently than quarterly, the Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Adviser will promptly refer such loan for arbitration to an independent arbitrator selected by the Trustees of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight repurchase agreements and commercial bank borrowings, the yield of any money market fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. The Adviser will prepare and submit to the Trustees for review an initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, the Adviser will report on the operations of the proposed credit facility at the Trustees' quarterly meetings.

Each Fund's chief compliance officer, as defined in rule 38a1(a)(4) under the Act, shall prepare an annual report for its Trustees each year that the Fund participates in the proposed credit facility, that evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N–SAR as such Form may be revised, amended or superseded from time to time, for each year that the Fund participates in the proposed credit facility, that certifies that the Fund and the Adviser have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, such certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield of the money market funds, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and

(e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent public accountants, in connection with their audit examination of the Fund, will review the operation of the proposed credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05463 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

[2] If the dispute involves Funds with different Trustees, the respective Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, March 12, 2014 at 10:30 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

- The Commission will consider whether to propose rules related to standards for clearing agencies under Section 17A of the Securities Exchange

Act of 1934 and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The duty officer has determined that no earlier notice was practicable.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 10, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05591 Filed 3–11–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71663; File No. SR–CBOE–2014–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

March 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 March 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

CBOE proposes to amend the Fees Schedule of its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the CBSX Fees Schedule in connection with a planned business and market reorganization regarding CBSX. One effect of this proposed change will be to simplify transaction fees. Currently, for transactions in securities priced $1 or greater, there are a variety of fee and rebate tiers depending at least partly on the liquidity that a market participant adds to or removes from CBSX.[3] Fee amounts can also depend on the type of order being utilized or order liquidity being removed, as well as the products being traded.[4] For transactions in securities priced less than $1, CBSX assesses different fee amounts depending on whether the market participant is a Maker or a Taker. CBSX now proposes to cease offering a Maker-Taker pricing structure that may distinguish fee and rebate amounts based upon amount of liquidity added or removed by the market participant, the product being traded, or whether the trade adds liquidity using a silent, silent-mid, or silent-post-mid order, or removes silent, silent-mid, or silent-post-mid liquidity. Instead, the Exchange proposal would simplify its pricing. For transactions in securities priced $1 or greater, whether Maker or Taker, CBSX will assess a fee of $0.0030 per share. For transactions in securities priced less than $1, whether Maker or Taker, CBSX will assess a fee of 0.30% of the dollar value of the transaction. Along with aiding in preparation for a planned business and market reorganization regarding CBSX, the Exchange believes that the proposed simplified fee structure may make it easier for market participants to determine which fees apply to their transactions.

CBSX also proposes to eliminate its Inactivity Fee.[5] The Inactivity Fee is applied to CBSX Trading Permit Holders that do not transact a certain amount of shares on CBSX. CBSX no longer believes that this fee is necessary, and therefore proposes to eliminate it.

In conjunction with these proposed changes, CBSX proposes to clean up its Fees Schedule. Footnotes 1, 4, 5 and 6 to the transaction fees will no longer be applicable, and therefore CBSX proposes to delete them. Current footnotes 2 and 3 will become footnotes 1 and 2, respectively. Due to the deletion of section 5, the Inactivity Fee, all sections afterwards will be re-numbered (current section 6 becomes section 5, current section 7 becomes section 6, current section 8 becomes section 7, and current section 9 becomes section 8).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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 Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable

[3] *See* CBSX Fees Schedule, section 2.

[4] *See* CBSX Fees Schedule, section 2. While CBSX offers different pricing for products classified as the ''Select Symbols'', there currently are no products listed as ''Select Symbols''.

[5] The Inactivity Fee is charged to any CBSX Trading Permit Holder that trades less than an average of 100,000 shares per day over a calendar month period. This fee will be calculated monthly. The amount of this fee is $5,000 per month. A CBSX Trading Permit Holder may not be assessed this fee until the calendar month following the first full calendar month after the effective date of the Trading Permit. If a CBSX Trading Permit Holder incurs this fee for a calendar month period but trades at least an average of 200,000 shares per day over the following calendar month period, then the Exchange will rescind the Inactivity Fee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

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) [9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed new fees structure, for transactions priced $1 or greater and for those priced less than $1, is reasonable because the amounts are similar to those assessed by other exchanges or by CBSX,[10] and is consistent with those limits set by Regulation NMS.[11] Further, the Exchange believes that the proposed simplified fee structure may make it easier for market participants to determine which fees apply to their transactions. The Exchange believes that the proposed new fees structure is equitable and not unfairly discriminatory because it will apply to all market participants and will not distinguish fee and rebate amounts based upon whether the market participant is a Maker or Taker, the amount of liquidity added or removed by the market participant, the product being traded, or whether the trade adds liquidity using a silent, silent-mid, or silent-post-mid order, or removes silent, silent-mid, or silent-post-mid liquidity.

The Exchange believes that the elimination of the Inactivity Fee is reasonable because market participants that would otherwise have qualified to be assessed the fee now will not be assessed the fee. The Exchange believes that this elimination is equitable and not unfairly discriminatory because it will apply to all market participants, and nobody will be assessed the Inactivity Fee.

The Exchange believes that cleaning up the Fees Schedule by deleting no-longer-relevant footnotes and amending the numbering of sections due to the deletion of the Inactivity Fee will eliminate potential confusion and make the Fees Schedule easier to read, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

[9] *Id.*

[10] BATS Exchange, Inc. (''BATS'') assesses a fee of $0.0030 per share that removes liquidity for all securities priced $1.00 or above (*see* BATS Fee Schedule). For Taker transactions in securities priced less than $1, CBSX already assesses a fee of 0.30% of the dollar value of the transaction; CBSX merely proposes to assess the same fee amount for the Maker side of such transactions.

[11] *See* 17 CFR 242.610(c)(1)–(2).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBSX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBSX does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply to all CBSX market participants equally. CBSX does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only apply to trading on CBSX. To the extent that the proposed changes may make CBSX a more attractive trading venue to market participants at other exchanges, such market participants may elect to become CBSX market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] 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:

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

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–2014–018 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–2014–018. 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–2014–018 and should be submitted on or before April 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05455 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71662; File No. SR–NSX–2014–06]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule To Reduce a Fee for Orders Routed to Other Trading Centers

March 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 28, 2014, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1. Specifically, the Exchange is seeking to amend Section II. (Other Services), subsection A. (Order Routing—All Tapes) [3] to reduce the per share fee charged to Exchange Equity Trading Permit (''ETP'') [4] Holders for orders in securities priced at $1.00 or greater that are routed away to, and executed on, another Trading Center [5] from the current rate of $0.0030 to the proposed rate of $0.0025.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Tapes'' refers to the designation assigned in the Consolidated Tape Association (''CTA'') Plan for reporting trades with respect to securities in Networks A, B and C. Tape A securities are those listed on the New York Stock Exchange, Inc.; Tape B securities are listed on NYSE MKT, formerly NYSE Amex, and regional exchanges. Tape C securities are those listed on the NASDAQ Stock Market LLC.

[4] Exchange Rule 1.5 defines ''ETP'' as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

[5] Exchange Rule 2.11(a) describes ''Trading Centers'' as other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks, or other brokers or dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the current Fee Schedule, Section II.A. to reduce the per share fee charged to ETP Holders for orders routed to, and executed on, other Trading Centers from the current rate of $0.0030 to the proposed rate of $0.0025. As proposed, this rate will apply only to transactions in securities priced at $1.00 or greater. Consistent with this proposed reduction in the transaction fee for routed order [sic], the Exchange proposes to amend Section II.A. with respect to the fees applicable to Double Play Orders.[6] An ETP Holder that enters a Double Play Order will not be charged a routing fee under Section II. for the initial routing to a designated away Trading Center and any unexecuted portion of a Double Play Order in a security priced at $1.00 and above that is returned and executed on the Exchange shall be subject to either Section I of the Fee Schedule, or a fee of $0.0025 per share if the order is subsequently routed to an away Trading Center in accordance with Exchange Rule 11.15(a)(ii).[7]

The Exchange states that it is making these changes to Section II.A. of the Fee Schedule as part of its ongoing assessment of the U.S. equity securities markets and the competitive environment in which it operates. The Exchange submits that the proposed reduction in the transaction fee for routed orders in securities priced at $1.00 or greater from $0.0030 to $0.0025 aligns with the changes to the Fee Schedule that the Exchange filed with the Commission for effectiveness as of February 25, 2014.[8] Specifically, the Exchange believes that the instant proposal will increase opportunities to enhance the execution quality experienced by ETP Holders through improved interaction between liquidity providers and liquidity removers (respectively described as ''Makers'' and ''Takers'' of liquidity in the current Fee Schedule). The Exchange believes that, by reducing the transaction fee per executed share for routed orders in securities priced at $1.00 or greater, it will further incentivize liquidity removers to access the Exchange to remove liquidity at lower cost. In seeking to draw more liquidity, the Exchange aspires to improve the price discovery process, improve execution quality, and lower costs for ETP Holders. The Exchange notes that the proposed change will be available to all ETP Holders with the anticipated result of better execution quality at lower costs.

The Exchange submits that the instant proposal furthers its goals of maximizing the effectiveness of its business model, offering economic incentives to ETP Holders to access the Exchange and providing a high-quality and cost-effective execution venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[9] in general and, in particular, Section 6(b)(4) of the Act,[10] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange not permit

[6] Exchange Rule 11.11(c)(10) defines a Double Play Order as ''[a] market or limit order for which the ETP Holder instructs the System to route to designated away Trading Centers which are approved by the Exchange from time to time without first exposing the order to the NSX Book. A Double Play Order that is not executed in full after routing away receives a new timestamp upon return to the Exchange and is ranked and maintained in the NSX Book in accordance with Rule 11.14(a).''

[7] Exchange Rule 11.15 (Order Execution), subparagraph (a)(ii), *Routing to Away Trading Centers,* describes the Exchange's process for routing eligible orders to away Trading Centers.

[8] *See* SR–NSX–2014–05. The Exchange filed with the Commission amendments to the Fee Schedule effective as of February 25, 2014 that, among other changes, adopted a new pricing model that provided for fees for adding liquidity and rebates for removing liquidity (a ''taker/maker'' pricing model) and made certain other conforming amendments. These included eliminating the separate fee and rebate structure for the Automatic Execution and Order Delivery modes of order interaction and eliminating certain execution-based rebates available in some instances.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78(f)(b)(4).

[11] 15 U.S.C. 78f(b)(5).

unfair discrimination between customers, issuers, brokers, or dealers, and be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange submits that its proposal to reduce the per share fee for transactions in routed orders in securities priced at $1.00 or greater from $0.0030 to $0.0025 is consistent with Section 6(b)(4) of the Act in that it is equitably allocated. The reduced fee will be available to all ETP Holders entering orders in securities priced at $1.00 or greater that result in a route to another Trading Center and a subsequent transaction. The Exchange believes that the proposal also meets the requirement under Section 6(b)(4) of the Act that fees assessed by the Exchange be reasonable. Specifically, the Exchange proposes to lower the current fee from $0.0030 to $0.0025 as a means to incentivize increased activity by ETP Holders. The Exchange submits that the proposed reduction of $0.0005 in the fee for shares routed away and executed on another Trading Center and the adoption of a new fee of $0.0025 constitutes a reasonable fee that aspires to encourage more activity by liquidity providers, which in turn will result in more ETP Holders accessing the Exchange to remove liquidity. As noted by the Exchange, the reduced fee will apply to all ETP Holders that enter an order on the Exchange in a security priced at $1.00 or greater that is subsequently routed, in whole or in part, and results in a transaction on another Trading Center. The Exchange proposes a parallel change to the fee applicable to any unexecuted portion of a Double Play Order in a security priced at or above $1.00 that is returned to the Exchange after the initial route to the designated away Trading Center, and subsequently routed out to another Trading Center for purposes of compliance with trading rules. Such an order will be subject to the proposed fee of $0.0025 per executed share. This pricing change with respect to Double Play Orders will be equitably applied to all ETP Holders entering Double Play Orders and is reasonable to assure that such orders do not receive disparate pricing.

The Exchange further submits that its proposal meets the requirements of Section 6(b)(5) of the Act. By seeking to attract more liquidity to the NSX market through the proposed amendment, the Exchange is seeking to improve execution quality, price discovery and cost-effectiveness. The Exchange believes that this amendment will, therefore, further the purposes of Section 6(b)(5) in that it does not permit unfair competition between customers, issuers, brokers or dealers and is designed to promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes, in fact, that the proposed change will operate to enhance rather than burden competition by aspiring to increase liquidity and improve execution quality on the Exchange through an equitable allocation of a reasonable economic incentive. The Exchange submits that its belief that the instant change will enhance competition is supported by the fact that the proposed fee rate of $0.0025 per executed share for orders routed by the Exchange to other Trading Centers is within the range of fees assessed by other national securities exchanges for executions in routed orders.[12]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4.[14] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] *See, e.g.,* NASDAQ OMX Price List at *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2;* BATS BZX Exchange Fee Schedule at *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.*

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR.240.19b–4.

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–NSX–2014–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2014–06. 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–NSX–2014–06 and should be submitted on or before April 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05453 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71665; File No. SR–MSRB–2013–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed MSRB Rule G–47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G–19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D–15 and G–48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance

March 7, 2014.

I. Introduction

On September 17, 2013, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''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 consisting of new MSRB Rule G–47 (time of trade disclosures), new MSRB Rules D–15 and G–48 (sophisticated municipal market professionals or ''SMMPs''), and amendments to MSRB Rule G–19 (suitability). The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.[3] The Commission received two (2) comment letters in response to the proposed rule change.[4] On January 14, 2014, the MSRB responded to the comments.[5] On January 16, 2014, the Commission published an order to solicit comments from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change (''Proceedings Order.'').[7] The Commission received no comment letters in response to the Proceedings Order. The Commission is approving the proposed rule change.[8]

II. Description of Proposal

As further described in the Proposing Release, the MSRB states that it has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and proposes to consolidate this guidance and codify it into several rules: a new time of trade disclosure rule (proposed Rule G–47), a revised suitability rule (Rule G–19), and two new SMMP rules (proposed Rules D–15 and G–48). Additionally, the proposed revisions to Rule G–19 are designed to harmonize the MSRB's suitability rule with the Financial Industry Regulatory Authority's (''FINRA'') suitability rule.[9]

In connection with the rule changes described above, the MSRB proposed to delete certain interpretive guidance affected by these rule changes from the MSRB's Rule Book. Additionally, in the Proposing Release, the MSRB indicated that it did not intend to preserve the relevant guidance, because doing so ''would not advance the MSRB's goal to streamline its rulebook.'' [10] In its Response, the MSRB articulated a different approach. Specifically, to address a commenter concern, the MSRB stated that it will archive on its Web site the existing guidance that is to be deleted from the Rule Book in connection with the proposed rule change.[11] Moreover, the MSRB states that ''[t]o the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.'' [12]

A. Rule G–47 on Time of Trade Disclosures

MSRB Rule G–17 provides that, in the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer (''dealer''), and municipal advisor must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G–17 to require a dealer, in connection with a municipal securities transaction, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.[13] The MSRB stated in the Proposing Release that it has issued extensive interpretive guidance discussing this time of trade disclosure obligation in general, as well as in specific scenarios. Proposed Rule G–47 is designed to consolidate most of the previously issued guidance into rule language which the MSRB believes would ease the burden on dealers and other market participants who endeavor to understand, comply with and enforce these obligations. The MSRB asserted that the proposed codification of the interpretive guidance on time of trade disclosure obligations is not intended to, and will not, substantively change the current obligations. Rather, the MSRB maintained that the codification is an effort to consolidate the current obligations into streamlined rule language.

A summary of proposed Rule G–47 is as follows:

1. General Disclosure Obligation

Proposed Rule G–47(a) states that dealers cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 70593 (October 1, 2013), 78 FR 62867 (October 22, 2013) (Notice of Filing of a Proposed Rule Change Consisting of Proposed MSRB Rule G–47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G–19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D–15 and G–48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance) (''Proposing Release''). The comment period closed on November 12, 2013.

[4] Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2013 (''ICI Letter'') and David L. Cohen, Managing Director/Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 (''SIFMA Letter'').

[5] *See* Letter from Michael L. Post, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated January 14, 2014 (''Response'').

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Exchange Act Release No. 71326 (January 16, 2014), 79 FR 3909 (January 23, 2014) (Order Instituting Proceedings 2013–SR–MSRB–07). The comment period closed on February 13, 2014.

[8] The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[9] *See* FINRA Rule 2111.

[10] *See* Proposing Release at 21 (responding to a SIFMA comment regarding proposed Rule G–47). *See also* Proposing Release at 4, describing the MSRB's streamlining goals (''The structure of Proposed G–47 (rule language followed by supplementary material) is the same structure used by FINRA and other selfregulatory organizations (''SROs''). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.'')

[11] *See* Response at 2. *See also* discussion of comments, below.

[12] Response at 2.

[13] *See, e.g., MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G–17* (November 30, 2011).

transaction and material information about the security that is reasonably accessible to the market. The rule applies regardless of whether the transaction is unsolicited or recommended or whether it occurs in a primary offering or the secondary market. The proposed rule provides that the disclosure can be made orally or in writing.

Proposed Rule G–47(b) states that information is considered to be ''material information'' if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The proposed rule defines ''reasonably accessible to the market'' as information that is made available publicly through ''established industry sources.'' Finally, the proposed rule defines ''established industry sources'' as including the MSRB's Electronic Municipal Market Access (''EMMA''®) [14] system, rating agency reports, and other sources of information generally used by dealers that effect transactions in the type of municipal securities at issue.

2. Supplementary Material

In addition to stating the general disclosure obligation, proposed Rule G–47 includes supplementary material describing the disclosure obligation in more detail. Proposed supplementary material .01 provides that dealers have a duty to give customers a complete description of the security, which includes a description of the features that would likely be considered significant by a reasonable investor, and facts that are material to assessing potential risks of the investment. This section of the proposed supplementary material further provides that the public availability of material information through EMMA, or other established industry sources, does not relieve dealers of their disclosure obligations. Section .01 of the proposed supplementary material also provides that dealers may not satisfy the disclosure obligation by directing customers to established industry sources or through disclosure in general advertising materials. Finally, section .01 of the proposed supplementary material states that whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

Proposed supplementary material .02 provides that dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other dealers. Proposed supplementary material .03 provides a list of examples describing information that may be material for certain types of securities and in specific scenarios and, therefore, would require disclosures to a customer.

Finally, proposed supplementary material .04 provides that dealers must implement processes and procedures reasonably designed to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer.

B. Rule G–19, on Suitability of Recommendations and Transactions

The amendments described below are designed to more closely harmonize Rule G–19 with FINRA's suitability rule,[15] and to incorporate elements of the MSRB's current interpretive guidance on suitability into Rule G–19. Proposed Rule G–19 includes Supplementary Material .01 through .06, which generally tracks Supplementary Material .01 through .06 in FINRA Rule 2111.[16]

A summary of the proposed revisions to Rule G–19 is as follows:

1. Account Information

Current MSRB Rule G–19(a) requires dealers to obtain a record of certain customer information at or before completion of a transaction in municipal securities. The MSRB did not include a provision equivalent to current Rule G–19(a) in proposed Rule G–19, because MSRB Rule G–8 already independently requires dealers to make and keep a record of this information for each customer. Additionally, by deleting this provision, the MSRB intends to streamline the rule and more closely align it with FINRA's suitability rule, which does not contain this specific requirement.[17]

2. Information Required for Suitability Determinations

The current MSRB suitability rule contains a list of customer information that dealers must obtain prior to recommending a transaction to a non-institutional account.[18] The proposed revisions to Rule G–19 would expand this list to include additional items from FINRA's suitability rule [19] such as: age, investment time horizon, liquidity needs, investment experience and risk tolerance. The proposed revision also would delete Rule G–19(b) and replace it with rule language corresponding to FINRA's suitability rule. The list of customer information that dealers must assess in the proposed rule would also include ''any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation,'' which corresponds to language in the FINRA rule.[20] Therefore, the proposed rule would delete the similar requirement in current MSRB Rule G–19(c)(ii) which states that, in recommending a transaction, a dealer shall have reasonable grounds ''based upon the facts disclosed by such customer or otherwise known about such customer for believing that the recommendation is suitable.''

Further, the proposed revisions to Rule G–19 incorporate the reasonable-basis suitability terminology from FINRA Rule 2111 in supplementary material .05(a) and delete section (c)(i) of Rule G–19.[21]

3. Discretionary Accounts

Current MSRB Rule G–19(d)(i) provides that dealers cannot effect transactions in municipal securities with or for a discretionary account unless permitted by the customer's prior written authorization that has been accepted in writing by a municipal securities principal. The MSRB proposed to delete this provision, because there is a substantially similar provision already included in MSRB Rule G–8(a)(xi)(I) which requires that, for customer discretionary accounts, dealers must make and keep a record of the customer's written authorization to exercise discretionary power over the account, written approval of the municipal securities principal who supervises the account, and written approval of the municipal securities principal with respect to each transaction in the account stating the date and time of approval.

Current MSRB Rule G–19(d)(ii) states that a dealer cannot effect a transaction

[14] EMMA is a registered trademark of the MSRB.

[15] *See* FINRA Rule 2111.

[16] The Proposing Release states that ''. . . Rule G–19 will be interpreted in a manner consistent with FINRA's interpretations of Rule 2111. If the MSRB believes an interpretation should not be applicable to Rule G–19, it will affirmatively state that specific provisions of FINRA's interpretation do not apply.''

[17] *See* FINRA Rule 2111.

[18] *See* MSRB Rule G–19(b).

[19] *See* FINRA Rule 2111(a).

[20] *Id.*

[21] As noted in the Proposing Release, although this change deletes the explicit requirement in MSRB Rule G–19(c)(i) for dealers to consider information available from the issuer of the security or otherwise in making suitability determinations, the MSRB asserts that in order to perform a reasonable-basis suitability analysis, dealers must necessarily consider information available from the issuer of the security.

in municipal securities with or for a discretionary account unless the dealer first determines that the transaction is suitable for the customer or the transaction is specifically directed by the customer and was not recommended by the dealer. Instead, proposed MSRB Rule G–19 includes a general requirement, providing that a dealer must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer. The MSRB proposed deleting current Rule G–19(d)(ii) on the basis that: (1) The suitability obligation is the same for discretionary and non-discretionary accounts, and therefore, there is no reason to restate the obligation as it specifically relates to discretionary accounts; and (2) there is no corresponding provision in FINRA Rule 2111. The MSRB noted in its Response that it plans to consider adopting a separate rule addressing discretionary accounts and dealers continue to owe their customers a duty of fair dealing under MSRB Rule G–17 regarding discretionary accounts.

4. Churning

The proposed revisions to Rule G–19 retain the substance of the existing MSRB prohibition on churning,[22] but recast it using the current terminology of ''quantitative suitability'' used in FINRA's suitability rule.[23] The quantitative suitability requirement is included in proposed Rule G–19, supplementary material .05(c).

5. Investment Strategies

The proposed amendments to Rule G–19 incorporate the application of suitability to ''investment strategies.'' Specifically, proposed supplementary material .03 defines the phrase ''investment strategy involving a municipal security or municipal securities'' by stating that it is ''to be interpreted broadly and would include, among other things, an explicit recommendation to hold a municipal security or municipal securities.'' This definition is consistent with the definition of ''investment strategy involving a security or securities'' in FINRA's suitability rule.[24] The proposed MSRB suitability rule, like the FINRA rule, carves out communications of certain types of material as long as such communications do not recommend a particular municipal security or municipal securities.[25] The MSRB stated in the Proposing Release that the list of materials in proposed Rule G–19, supplementary material .03, differs in minor respects from the list of materials in FINRA's suitability rule[26] to account for unique attributes of the municipal securities market.

6. Proposed Technical Revisions to Rule G–8, on Books and Records

MSRB Rule G–8(a)(xi)(F) includes references to MSRB Rule G–19(c)(ii) and G–19(b). These referenced provisions are not codified as such in the proposed revisions to MSRB Rule G–19, but the concepts will remain in the proposed rule. Therefore, the MSRB proposed revising MSRB Rule G–8(a)(xi)(F) to include a reference to the entire MSRB Rule G–19.

C. Rules D–15 and G–48 on SMMPs

Proposed Rules D–15 and G–48 on SMMPs (the ''proposed SMMP rules'') consist of a new definitional rule, D–15, defining an SMMP and a new general rule, G–48, on the regulatory obligations of dealers to SMMPs.

A summary of proposed Rules D–15 and G–48 is as follows:

Proposed Rule D–15 defines the term ''sophisticated municipal market professional'' or ''SMMP'' as a customer of a dealer that is a bank, savings and loan association, insurance company, or registered investment company; or an investment adviser registered with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or any other entity with total assets of at least $50 million. Proposed Rule D–15 further requires that the dealer have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities, and that the customer affirmatively indicate that it is exercising independent judgment in evaluating the recommendations of the dealer.

The supplementary material to proposed Rule D–15 addresses the reasonable basis analysis and the customer affirmation. Section .01 states that as part of the reasonable basis analysis, the dealer should consider the amount and type of municipal securities owned or under management by the customer. Section .02 states that a customer may affirm that it is exercising independent judgment either orally or in writing, and such affirmation may be given on a trade-by-trade basis, on a type-of-municipal-security basis, or on an account-wide basis.

Proposed Rule G–48 describes the application of certain obligations to SMMPs. More specifically, the proposed rule provides that a dealer's obligations to a customer that it reasonably concludes is an SMMP are modified as follows: (1) With respect to the time of trade disclosure obligation in proposed Rule G–47, the dealer would not have any obligation to disclose material information that is reasonably accessible to the market; (2) with respect to transaction pricing obligations under Rule G–18, the dealer would not have any obligation to take action to ensure that transactions meeting certain conditions set forth in the proposed rule are effected at fair and reasonable prices; (3) with respect to the suitability obligation in Rule G–19, the proposed rule provides that the dealer would not have any obligation to perform a customer-specific suitability analysis; and (4) with respect to the obligation regarding bona fide quotations in Rule G–13, the dealer disseminating an SMMP's quotation which is labeled as such would be required to apply the same standards described in Rule G–13(b) for quotations made by another dealer.

III. Summary of Comments Received and the MSRB's Response

On October 22, 2013, the Commission published the MSRB's proposed rule change in the **Federal Register**.[27] The comment period ended on November 12, 2013, and the Commission received two (2) comment letters in response to the proposed rule change.[28] Both commenters expressed general support for the proposed rule change but sought further changes or clarification as discussed below.[29] The MSRB responded to comments in a letter dated January 14, 2014.[30] On January 16, 2014, the Commission published the Proceedings Order in the **Federal Register** to provide interested parties an opportunity to consider the MSRB's proposed treatment of past interpretive guidance, as set forth in the Response.[31] The Commission received no comment letters in response to the Proceedings Order.

[22] *See* MSRB Rule G–19(e).

[23] *See* FINRA Rule 2111, Supplementary Material .05(c).

[24] *See* FINRA Rule 2111, Supplementary Material .03.

[25] *Id.*

[26] *Id.*

[27] *See supra* note 3.

[28] *See supra* note 4.

[29] *See* ICI Letter and SIFMA Letter.

[30] *See supra* note 5.

[31] *See supra* note 7.

A. General Support for the Proposed Rule Change

Both commenters expressed support for harmonizing MSRB Rule G–19 with FINRA's suitability rule.[32] One commenter noted that it supports the efforts by the MSRB to provide clarity to regulated entities by developing new or revised rules that highlight core principles.[33]

B. Suggestions for Changes to Proposal

1. Include Suitability Guidance Regarding 529 Plans

One commenter recommended that the MSRB incorporate into Rule G–19 existing interpretive guidance relating to suitability assessments for 529 college savings plans.[34] The commenter noted that that inclusion would, among other things, ''[e]liminate the confusion that may result from MSRB registrants believing that the MSRB's suitability rule contains all relevant information relating to their suitability obligations. . . .'' [35]

The MSRB responded by explaining that the guidance is not proposed to be codified in Rule G–19 because the MSRB may propose a separate rule addressing 529 plans in the future, and the relevant guidance will remain intact until such time as the MSRB may adopt such a rule.

2. Differentiate Disclosure Obligations Between Sales to Customers Versus Purchasers From Customers

One commenter stated that proposed MSRB Rule G–47 should reflect that there is a different time of trade disclosure obligation when a dealer is selling a bond to a customer as opposed to when a dealer is purchasing a bond from a customer arguing that customers should know the characteristics of the bonds they own.[36] The commenter acknowledged that in answer to a similar comment it previously made, the MSRB clarified in the rule that whether the customer is purchasing or selling is a factor in determining what information is material and must be disclosed by the dealer.[37] The commenter stated that the modification did ''not go far enough'' and requested that the MSRB further modify Rule G–47 to include supplementary material explaining the differences in disclosure obligations.[38] The MSRB responded this modification would involve a substantive change to the current disclosure obligations beyond the scope of this rulemaking and that the MSRB Board may consider substantive changes as part of a future initiative.

3. Extend Implementation Period to One Year

One commenter advocated for a one year implementation period, stating that the period proposed by the MSRB was too brief given the scope of the training and system changes required.[39] The MSRB responded that it does not believe such a lengthy implementation period is necessary, noting that the revised rule will largely be consistent with FINRA's suitability rule, with which many dealers already are familiar. Nonetheless, to address this concern, the MSRB extended the effective date for the proposed rule change for an additional 60 days, to total 120 days following the date of SEC approval.

4. Reflect Reduced Duties to SMMPs Within Rules Governing non-SMMPs

One commenter suggested that rules governing non-SMMPs should also reflect dealers' reduced duties to SMMPs.[40] The MSRB responded that stand-alone rules are more prominent, and that the proposed stand-alone SMMP rule would address dealers' modified duties in multiple areas under rules not part of this rulemaking. Additionally, the MSRB noted that future modifications to dealer obligations with respect to SMMPs could be accomplished more efficiently by having a stand-alone SMMP rule. The commenter also suggested that Rule G–19 and proposed Rules G–47 and G–48 should cross-reference each other stating that cross-referencing would further the MSRB's objective to provide clarity to investors, dealers, and regulators.[41] The MSRB responded that such cross-references are unnecessary.

5. Retain Existing Interpretive Guidance

One commenter asked the MSRB to archive and preserve existing time of trade disclosure interpretive notices.[42] As noted previously, the MSRB stated that it will archive on its Web site the existing guidance that is to be deleted from the MSRB's Rule Book in connection with the proposed rule change. The MSRB further responded that to the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case.

C. Requests for Clarifications

1. Use of a Preliminary Official Statement (''POS'') To Satisfy Time of Trade Disclosure Obligations

One commenter noted that dealers, in reliance on previous guidance indicating that a POS can serve as a primary vehicle for providing time of trade disclosures, have either delivered or provided access to a POS to fulfill time of trade disclosure obligations.[43] The commenter requested that the MSRB affirm that a POS can serve as a primary vehicle for providing the required time of trade disclosures under Rule G–47.[44] The MSRB found this comment to be outside the scope of the current proposal because it would require a substantive change, which the MSRB may consider as part of a future initiative. Nevertheless, in response, the MSRB stated that existing guidance does not state that providing mere access to a POS would be a sufficient means of disclosure, and the adequacy of disclosure depends on facts and circumstances. The MSRB noted, however, that existing guidance will continue to be potentially applicable.

2. Additional Clarifications

One commenter requested that the MSRB affirm (1) that information barriers do not need to be dismantled in order to provide time of trade disclosures, and (2) that time of trade disclosures need not be given to customers that hold discretionary accounts.[45] The MSRB indicated that these requests would require substantive changes to existing requirements and are thus outside the scope of the current proposal. The MSRB stated that it may consider these requests if the MSRB Board undertakes to amend the rule in the future.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters received and the MSRB's response, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, as discussed below, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which, among other things, provides that the MSRB's

[32] ICI Letter and SIFMA Letter.
[33] *See* SIFMA Letter.
[34] ICI Letter.
[35] *Id.*
[36] SIFMA Letter.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*

rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[46]

The disclosure of material information about a transaction to investors and the performance of a meaningful suitability analysis are central to the role of a dealer in facilitating municipal securities transactions. Proposed Rule G–47, on time of trade disclosures, codifies current interpretive guidance and protects investors by requiring dealers to make disclosures to customers in connection with purchases and sales of municipal securities. These required disclosures are designed to prevent fraudulent and manipulative acts and practices by dealers, and promote just and equitable principles of trade, by requiring dealers to disclose information about a security and transaction that would be considered significant or important to a reasonable investor in making an investment decision. Similarly, the proposed revisions to Rule G–19, on suitability, further these purposes by requiring dealers and their associated persons to make only suitable recommendations to customers and fosters more efficient regulation by harmonizing the rule with FINRA's suitability rule. The proposed revisions to Rule G–19 are also aligned with a recommendation of the SEC in its 2012 Report on the Municipal Securities Market that the MSRB consider ''amending Rule G–19 (suitability) in a manner generally consistent with recent amendments by FINRA to its Rule 2111, including with respect to the scope of the term 'strategy' . . . . .'' [47] The Commission believes that the proposed rule, which would require a dealer to have a reasonable basis in recommending an investment strategy, enhances investor protection. Specifically, by interpreting the term ''investment strategy'' broadly, the MSRB will provide important protections to investors who receive this type of recommendation. Moreover, the Commission believes that the MSRB, through it Response, has addressed commenters' concerns, other than those it determined are outside the scope of the current proposal.

In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation.[48] The Commission found significant that the proposed changes related to time-of-trade disclosure and SMMPs involve no substantive change to existing requirements. Additionally, the rule changes could ease burdens on dealers and promote competition by clarifying certain core dealer obligations and the reduced obligations when transacting business with SMMPs.

Furthermore, harmonizing MSRB Rule G–19 with the FINRA suitability rule enhances efficiency in the market by enabling those dealers that are dually registered with the MSRB and FINRA to establish and implement one suitability standard.[49] Although one commenter implied that further efficiency could be attained by including suitability guidance relating to 529 plans within proposed Rule G–19, the commenter did not indicate that the proposed rule created inefficiencies. Moreover, the Commission notes that the existing guidance relating to 529 plans continues to apply and understands that the MSRB may determine to propose a separate rule for 529 plans in the future.

The Commission also believes that the MSRB's Response includes certain accommodations that help promote efficiency and do not impede competition. Specifically, the MSRB's retention of its interpretative guidance and the continuing applicability of such guidance to the extent it does not conflict with any MSRB rules or interpretations provides continuity to dealers. Moreover, the MSRB's extension of the implementation period from 60 to 120 days gives additional time, if needed, for dealers to establish or modify their compliance systems.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Section 15B(b)(2)(C) of the Act. The proposal will become effective 120 days following the date of this order.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–MSRB–2013–07) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05456 Filed 3–12–14; 8:45 am]

BILLING CODE 8011–01–P

[46] 15 U.S.C. 78*o*–4(b)(2)(C).

[47] *See http://www.sec.gov/news/studies/2012/munireport073112.pdf* at 141.

[48] *See* 15 U.S.C. 78c(f).

[49] *See* Attachment to ICI Letter.

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Newnan Coweta Bancshares, Inc., Proper Power and Energy Inc., uVuMobile, Inc., WGNB Corp., and YouBlast Global, Inc.; Order of Suspension of Trading

March 11, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Newnan Coweta Bancshares, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Proper Power and Energy Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of uVuMobile, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WGNB Corp. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of YouBlast Global, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

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 companies. 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 companies is suspended for the period from 9:30 a.m. EDT on March 11, 2014, through 11:59 p.m. EDT on March 24, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–05629 Filed 3–11–14; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

George Foreman Enterprises, Inc., MacKay Life Sciences, Inc., Reinsurance Technologies, Ltd. (a/k/a Solution Technology International, Inc.), Tire International Environmental Solutions, Inc., WatchIt Technologies, Inc., Weststar Financial Services Corporation, and WorldSpace, Inc.; Order of Suspension of Trading

March 11, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of George Foreman Enterprises, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MacKay Life Sciences, Inc. because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Reinsurance Technologies, Ltd. (a/k/a Solution Technology International, Inc.) because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tire International Environmental Solutions, Inc. because it has not filed any periodic reports since the period ended June 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WatchIt Technologies, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Weststar Financial Services Corporation because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WorldSpace, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

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 companies. 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 companies is suspended for the period from 9:30 a.m. EDT on March 11, 2014, through 11:59 p.m. EDT on March 24, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–05631 Filed 3–11–14; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8656]

Industry Advisory Group: Notice of Open Meeting

The Industry Advisory Group (IAG) of the Bureau of Overseas Buildings Operations (OBO) will meet on Tuesday, April 8 from 10:00 a.m. until 12:00 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street N.W., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, the public must enter and exit the building using only the 23rd Street entrance.

This committee serves the U.S. government in a solely advisory capacity concerning industry and academia's latest concepts, methods, best practices, innovations, and ideas related to OBO's mission to provide safe, secure, and functional facilities that represent the U.S. government to the host nation and support our staff in the achievement of U.S. foreign policy objectives. These facilities should represent American values and the best in American architecture, engineering, technology, sustainability, art, culture, and construction execution.

The majority of the meeting will be devoted to an exchange of ideas between the Department's senior management and IAG representatives, with reasonable time provided for members of the public to provide comment.

Admittance to the State Department building will be by means of a pre-arranged clearance list. To register for this meeting, please send an email to *IAGR@state.gov* by Friday, March 28, with the following information: First and last name, company/firm name, date of birth, country of citizenship, and the number and issuing country/state associated with a valid government-issued ID (i.e., U.S. government ID, U.S. military ID, passport, or driver's license). Requests for reasonable accommodation should also be sent to the same email address by March 28. The public may attend this meeting as seating capacity allows. Requests made after that date will be considered, but may not be able to be fulfilled.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database.

Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Please contact Christy Foushee at *FousheeCT@state.gov* or (703) 875–4131 with any questions.

Dated: March 5, 2014.

Lydia Muniz,

Director, Bureau of Overseas Buildings Operations, U.S. Department of State.

[FR Doc. 2014–05547 Filed 3–12–14; 8:45 am]

BILLING CODE 4710–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2013–0023]

Notice of Determination in Section 301 Investigation of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (Trade Representative) has determined that certain intellectual property rights (IPR) acts, policies, and

practices of Ukraine are unreasonable and burden or restrict United States commerce and are thus actionable under section 301(b) of the Trade Act of 1974, as amended (Trade Act). In light of the current political situation in Ukraine, the Trade Representative has determined that no action under section 301 is appropriate at this time.

FOR FURTHER INFORMATION CONTACT: Questions regarding this investigation should be directed as appropriate to: Elizabeth Kendall, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at (202) 395–3580; Isabella Detwiler, Director for Europe, at (202) 395–6146; or Shannon Nestor, Assistant General Counsel, at (202) 395–3150.

DATES: The Trade Representative made the determinations in this investigation on February 28, 2014.

SUPPLEMENTARY INFORMATION: On May 30, 2013, the Trade Representative initiated a Section 301 investigation of certain acts, policies, and practices of the Government of Ukraine with respect to intellectual property rights. See Identification of Ukraine as a Priority Foreign Country and Initiation of Section 301 Investigation, 78 FR 33886 (June 5, 2013). The acts, policies, and practices subject to investigation were those that formed the basis of Ukraine's designation in the May 1, 2013 Special 301 Report as a Priority Foreign Country. Those acts, policies, and practices involved: (1) The administration of Ukraine's system for collecting societies, which are responsible for collecting and distributing royalties to U.S. and other rights holders; (2) use of infringing software by Ukrainian government agencies; and (3) online infringement of copyright and related rights. The notice of initiation proposed a determination that these acts, policies, and practices are actionable under section 301(b), invited public comments on the matters subject to investigation, and provided notice of a public hearing.

The Office of the United States Trade Representative (USTR) held the public hearing on September 9, 2013. See Notice of Rescheduled Hearing in the Section 301 Investigation of Ukraine, 78 FR 45011 (July 25, 2013). Written submissions and testimony may be viewed on *www.regulations.gov* under the above-referenced docket number.

On November 29, 2013, the Trade Representative determined to extend the investigation by three months, such that the determinations in the investigation would be made by no later than February 28, 2014. See Notice of Determination to Extend Section 301 Investigation of Ukraine, 78 FR 72141 (December 2, 2013).

During the investigation, U.S. and Ukrainian officials held constructive discussions regarding the acts, policies and practices subject to investigation. However, U.S. concerns with those acts, policies, and practices were not resolved.

Based on the information obtained during the investigation, and consistent with the recommendation of the interagency Section 301 Committee, the Trade Representative has determined under Section 304(a)(1)(A) and (B) of the Trade Act that: (1) The acts, policies, and practices subject to investigation are unreasonable and burden or restrict U.S. commerce, and are thus actionable under Section 301(b) of the Trade Act; and (2) in light of the current political situation in Ukraine, no action under Section 301(b) is appropriate at this time.

USTR remains committed to addressing the matters subject to investigation, and looks forward to further engagement with the Government of Ukraine at an appropriate time.

William Busis,

Chair, Section 301 Committee.

[FR Doc. 2014–05536 Filed 3–12–14; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–19]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 2, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0874 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 7, 2014.

Lirio Liu,

Director, Office of Rulemaking.

PETITION FOR EXEMPTION

Docket No.: FAA–2013–0874

Petitioner: Hyannis Air Service d.b.a. Cape Air/Nantucket Airlines

Section of 14 CFR Affected: 14 CFR 119.21(a)(4) and 135.243(a)(1)

Description of Relief Sought:

Hyannis Air Service, Inc. d.b.a Cape Air/Nantucket Airlines requests relief from the requirements of § 135.243(a)(1)

requiring a Pilot in Command of Cape Air's part 135 commuter operation to possess an Airline Transport Pilot (ATP) certificate. Cape Air requests relief for its part 135 Scheduled Commuter Pilots be allowed to exercise their commercial pilot certificates with multi engine and instrument ratings in the course of their duties as captains for Cape Air. Cape Air would use current ATP Training Standards; ATP Aeronautical Experience requirements per § 61.159, ATP Practical Training Standards.

[FR Doc. 2014–05449 Filed 3–12–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12844; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0086; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0365]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 15, 2014. Comments must be received on or before April 14, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2002–12844; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0086; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0365], using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 17 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 17 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Gene Bartlett, Jr. (VT)
Danial C. Berry (AR)
Ronald D. Boeve (MI)
Marland L. Brassfield (TX)
Daniel M. Cannon (OR)
Jamie French (NC)
Wayne H. Holt (UT)
Billy R. Jeffries (WV)
Guy A. Lanham (FL)
Oscar N. Lefferts (AL)
Craig R. Martin (TX)
John D. McCormick (WY)
Carlos A. MendezCastellon (VA)
Willie L. Parks (CA)
Bradley S. Sanders (NM)
Gary N. Wilson (UT)
William B. Wilson (KY)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with

the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 68719; 68 FR 2629; 70 FR 57353; 70 FR 72689; 70 FR 7545; 71 FR 4194; 71 FR 13450; 72 FR 39879; 72 FR 40362; 72 FR 52419; 72 FR 62897; 73 FR 9158; 74 FR 19267; 74 FR 28094; 74 FR 43217; 74 FR 57551; 74 FR 60021; 74 FR 64124; 74 FR 65842; 75 FR 1451; 75 FR 1835; 75 FR 9482; 75 FR 9484; 76 FR 44652; 76 FR 66123; 76 FR 78729; 77 FR 3552; 77 FR 10604; 77 FR 10606; 77 FR 13691). Each of these 17 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 14, 2014.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 17 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited Federal Register publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2002–12844; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0086; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0365 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2002–12844; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2009–0086; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0365 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: February 26, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–05508 Filed 3–12–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0443]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

DATES: Comments must be received on or before April 14, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2013–0443 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 13 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0443'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0443'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Summary of Applications

Thomas Bynum

Mr. Bynum is a 61 year-old class A CDL holder in North Carolina. He does not have a history of seizure. He takes anti-seizure medication since his surgery 35 years ago with the dosage and frequency remaining the same since that time. If granted the exemption, he

would like to drive a CMV. His physician states that he is supportive of Mr. Bynum receiving an exemption.

Brian Conaway

Mr. Conaway is a 42 year-old class B CDL holder in Ohio. He has a history of seizures and has remained seizure free and off anti-seizure medication since his surgery 1999. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Conaway receiving an exemption.

Joan Diaz

Ms. Diaz is a 49 year-old class B CDL holder in Maryland. She has a history of seizure disorder and has remained seizure free for 32 years. She takes anti-seizure medication with the dosage and frequency remaining the same for over 3 years. If granted the exemption, she would like to drive a school bus. Her physician states that he is supportive of Ms. Diaz receiving an exemption.

Christopher Fitch

Mr. Fitch is a 51 year-old class B CDL holder in New York. He has a history of seizures and his last seizure was one year ago while in the hospital. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Fitch receiving an exemption.

Ronald Hartl

Mr. Hartl is a 55 year old driver in Wisconsin. He has a history of epilepsy and has remained seizure free for 35 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 10 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hartl receiving an exemption.

Donald Hernandez

Mr. Hernandez is a 40 year-old driver in California. He has a history of seizure disorder and has remained seizure free for 14 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hernandez receiving an exemption.

Craig Hoisington

Mr. Hoisington is a 41 year-old driver in New Hampshire. He has a history of epilepsy and has remained seizure free for 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for over 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hoisington receiving an exemption.

Earnest Lansberry

Mr. Lansberry is a 62 year-old driver in Pennsylvania. He has a history of seizure disorder and has remained seizure free for 7 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Lansberry receiving an exemption.

Michael Miller

Mr. Miller is a 56 year-old driver in Wisconsin. He has a history of epilepsy and has remained seizure free seizure for 11 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Miller receiving an exemption.

Scott Smith

Mr. Smith is a 39 year-old driver in California. He has a history of seizure and has remained seizure free for 12 years. He discontinued his anti-seizure medication 18 months ago. If granted the exemption, he would like to drive a CMV. His physician is supportive of Mr. Smith receiving an exemption.

Peter Thompson

Mr. Thompson is a 21 year-old driver in Florida. He has a history of seizures and has remained seizure free for over 10 years. He discontinued his anti-seizure medication 8 years ago. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Thompson receiving an exemption.

Nathaniel Ware

Mr. Ware is a 33 year-old driver in Alabama. He has a history of seizures and has remained seizure free for 4 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 2 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Ware receiving an exemption.

Jason Yowell

Mr. Yowell is a 42 year-old driver in Virginia. He has a history of seizures and has remained seizure free for 4 years. He discontinued his anti-seizure medication 10 months ago. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Yowell receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: February 26, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–05501 Filed 3–12–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2004–19477; FMCSA–2007–0071; FMCSA–2007–29019; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0298; FMCSA–2011–0299]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 31, 2014. Comments must be received on or before April 14, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2004–19477; FMCSA–2007–0071; FMCSA–2007–29019; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0298; FMCSA–2011–0299], using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 23 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 23 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

William M. Arbogast (FL)
Alberto Blanco (NC)
Michael B. Canedy (MN)
Larry Chinn (WI)
Layne C. Coscorrosa (WA)
Charles W. Cox (AR)
Gary W. Ellis (NC)
Robin S. England (GA)
Dennis J. Evers (OK)
Hector O. Flores (MD)
Miguel Godinez (CA)
W. R. Goold (AZ)
K. L. Guse (OH)
Steven W. Halsey (MO)
John C. Henricks (OH)
Donald W. Holt (MA)
Thomas M. Leadbitter (PA)
Jonathan P. Lovel (IL)
Tom A. McCarty (NM)
Ezequiel M. Ramirez (TX)
Kent S. Reining (IL)
Donald F. Wilton (CA)
Richard W. Wylie (CT)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 23 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (68 FR 61857; 68 FR 74699; 68 FR 75715; 69 FR 10503; 69 FR 64806; 70 FR 2705; 71 FR 644; 71 FR 6829; 72 FR 1054; 72 FR 58362; 72 FR 67344; 73 FR 6242; 73 FR 8392; 73 FR 16950; 74 FR 26464; 74 FR 65842; 74 FR 65845; 75 FR 1835; 75 FR 8184; 75 FR 9477; 75 FR 9478; 75 FR 9482; 76 FR 70212; 76 FR 70213; 76 FR 73769; 77 FR 541; 77 FR 3547; 77 FR 7233; 77 FR 10604; 77 FR 13689). Each of these 23 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 14, 2014.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and

31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 23 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2004–19477; FMCSA–2007–0071; FMCSA–2007–29019; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0298; FMCSA–2011–0299 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2004–19477; FMCSA–2007–0071; FMCSA–2007–29019; FMCSA–2009–0291; FMCSA–2009–0321; FMCSA–2011–0298; FMCSA–2011–0299 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: February 26, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–05506 Filed 3–12–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0174]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 33 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective March 13, 2014. The exemptions expire on March 14, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On January 10, 2014, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (79 FR 1908). That notice listed 33 applicants' case histories. The 33 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 33 applications on their merits and

made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 33 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, prosthetic eye, macular atrophy, anterior ischemic optic neuropathy, complete loss of vision, corneal transplant, angle recession glaucoma, small angle esotropia, macular scar, optic atrophy, dense amblyopia, optic pit maculopathy, macular degeneration, retinal detachment, corneal neovascularization, strabismic amblyopia, congenital cataract, macular hole, microphthalmia, aphakia, and superior altitudinal defect. In most cases, their eye conditions were not recently developed. Twenty-three of the applicants were either born with their vision impairments or have had them since childhood.

The ten individuals that sustained their vision conditions as adults have had it for a period of 4 to 33 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 33 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision of careers ranging from 3 to 39 years. In the past 3 years, two of the drivers were involved in crashes and two were convicted for moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the January 10, 2014 notice (79 FR 1908).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 33 applicants, two of the drivers were involved in crashes and two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like

interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 33 applicants listed in the notice of January 10, 2014 (79 FR 1908).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 33 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment is discussed below.

MAG Trucking supported granting an exemption to Rogelio C. Hernandez.

Conclusion

Based upon its evaluation of the 33 exemption applications, FMCSA exempts Trawn L. Andrews (NC), Jeffery A. Benoit (VT), Norvan D. Brown (IA), Thomas A. Busacca, Jr. (FL), James A. Champion (WA), James C. Colbert (FL), Bobby R. Cox (TN), Jackie K. Curlin (KY), Justin W. Demarchi (OH), Gary Goostree (OH), Jimmey C. Harris (TX), David G. Henry (TX), Rogelio C. Hernandez (CA), Michael J. Hoskins (KS), Zion Irizarry (NV), Mohamed H. Issak (KS), Craig B. Jacques (NY), William D. Jackson (MN), Juan J. Luna (CA), Robert Mollicone (FL), Christopher D. Moore (NC), Elmore Nicholson, Jr, (AL), Michael Pace (TX), Ernest S. Parsons, Jr. (NY), James C. Paschal, Jr. (GA), Lee E. Perry (AL), Harold D. Pressley (TX), Thomas H. Randall (MN), David T. Rueckert (WA), Jason C. Sadler (KY), Robert Schick (PA), Michael O. Thomas (NC), Danielle Wilkins (CA) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 26, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–05509 Filed 3–12–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0025]

Agency Request for Approval of a New Information Collection: Recruitment and Debriefing of Human Subjects for Field Study on Vehicle Occupant Protection Technologies

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comments on a proposed collection of information.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request Office of Management and Budget (OMB) approval for a new information collection. The information collection involves eligibility, demographic, and debriefing questionnaires. The information will be used to recruit participants for a field study on vehicle occupant protection technologies and to get information from study participants about their experience with such technologies. The study focuses on occupant protection technologies that restrict some vehicle functionality, permanently or temporarily, when they detect that a vehicle occupant is not wearing a seat belt.

DATES: Written comments should be submitted by May 12, 2014.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2014–0025 through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, US Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. Telephone: 202–366–9826.
- *Fax:* 202–493–2251.

Instructions: All submission must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulation.gov*, including any personal information provided. Please see the Privacy heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html* .

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov*, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For access to background documents, contact Lisandra Garay-Vega, Ph.D.; 202–366–1412 Vehicle Safety Research, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB:

OMB Control Number: Not assigned.

Title: Recruitment and Debriefing of Human Subjects for Field Test of Vehicle Occupant Protection Technologies

Form Numbers: None.

Type of Review: New Information Collection

Background: NHTSA's mission is to save lives, prevent injuries, and reduce economic losses resulting from motor vehicle crashes. Increasing seat belt use is one of the agency's highest priorities. Seat belt use has shown an increasing trend since 1995, accompanied by a steady decline in the percentage of unrestrained passenger vehicle occupant fatalities during daytime. In 2013, the nationwide seat belt use reached 87 percent for drivers and front seat passengers.[1] Despite gains in seat belt usage, data from the 2011 Fatality Analysis Reporting System (FARS) indicates that 52 percent of all passenger vehicle crash fatalities [2] were unbelted occupants.[3] The age group 21 to 24 had the highest percentage of unrestrained occupants killed: 2,172 fatalities, of which 1,385 (64%) were unrestrained. The second highest percentage of unrestrained passenger vehicle occupant fatalities was 63 percent among 25- to 34-year-olds.[c] Use of lap/shoulder seat belts reduce the risk of fatal injury to front-seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent. In 2011 alone, seat belts saved an estimated 11,949 lives.[c]

The proposed study will examine seat belt use; users' acceptance of emerging vehicle technologies designed to increase seat belt use; likelihood and potential strategies to circumvent the system; and unintended consequences. The study method consists of a field operation test to collect objective and subjective data about two prototype technologies developed by automakers to increase seat belt use. A total of 32 drivers from two age groups will be recruited to participate in the study, 16 non-seatbelt users (8 young drivers; 8 middle-aged drivers), and 16 part-time users (8 young drivers; 8 middle-aged drivers). The study sample will have equal numbers of male and female drivers from each age group. The research team acknowledges that it may not be possible to recruit non-users given the high seat belt use rate in Michigan (more than 90%). Alternatively, the research team may consider recruiting part-time users with different non-belt use frequencies. The estimated burden hours are shown for 48 to 60 respondents to account for estimated dropout rates.

Each driver will be presented with one baseline condition and each of the two vehicle occupant protection technologies. Each condition will last one week. Therefore, each participant will drive the research vehicles for three weeks. A data acquisition system will record system state (i.e., door, ignition, driver seat belt buckle) and video inside the vehicle cabin. The University of Michigan Transportation Research Institute, in collaboration with the Virginia Tech Transportation Institute and Montana State University, Western Transportation Institute, will conduct this study under a research contract with the NHTSA.

Description of the Need for the Information and Proposed Use of the Information: The collection of information consists of: (1) An eligibility questionnaire, (2) a demographic questionnaire; and (3) post study questionnaires.

The information to be collected will be used to:

• *Eligibility questionnaire(s)* will be used to obtain self-reported driving history information. Individuals interested in participating in the study will be asked to provide information about their driving history. People who have been convicted of felony motor convictions will be excluded. Individuals who pass the initial screening will be asked to provide their driver license number and consent to review their driving records to confirm self-reported driving history information. Drivers' consent and driving license numbers will be used to obtain official driving records from the state of Michigan. Individuals will be excluded from participating in the study if they refuse to grant UMTRI permission to review their public driving records or if they have been convicted of felony motor convictions in the last 2 years. This exclusion criterion is used to reduce the liability risk of providing participants with research vehicles.

• *Demographic questionnaire* will be used to obtain demographic information to confirm that the study group includes participants from various groups (e.g., age; gender; part-time seat belt users or those who sometimes wear their belts; non-users or those who never wear a seat belt; etc. Other demographic information will be collected to describe the study sample (e.g., annual travel distance).

[1] Pickrell, T. M., & Liu, C. (2014, January). *Seat Belt Use in 2013—Overall Results.* (Traffic Safety Facts Research Note. Report No. DOT HS 811 875). Washington, DC: National Highway Traffic Safety Administration.

[2] The 2012 and 2013 data on the percent of unrestrained passenger vehicle occupant fatalities during daytime is not yet available.

[3] NHTSA. (2013, June) *Occupant Protection* (Traffic Safety Facts 2011 Data. Report No.DOT HS 811 729). Washington, DC: National Highway Traffic Safety Administration. *http://www.nrd.nhtsa.dot.gov/Pubs/811729.pdf.*

• *Post study questionnaire(s)* will be used to get information about drivers' beliefs and attitude towards each occupant protection technology tested, and to identify potential problems associated with each system. These questionnaires will also be used to assess perceived usability of the systems in terms of acceptance and satisfaction, as well as willingness to have this technology in their vehicle. Each driver will complete a post study questionnaire twice, one by the end of the second week and the other by the end of the third week.

Respondents: Michigan drivers with a valid driver license.

Estimated Number of Respondents: 48 to 60

Estimated Number of Responses: One response per person to 25 to 160 questions total.

Estimated Total Annual Burden: 35 minutes per respondent (46 hours total).

Estimated Frequency: one-time for the eligibility and demographic questionnaire; two-times for the post study questionnaire.

TABLE 1—ESTIMATED BURDEN HOURS

Instrument	Number of respondents [4]	Frequency of responses	Number of questions	Estimated individual burden (minutes)	Total estimated burden hours	Total annualize cost to respondents [5]
Eligibility questionnaire	60	1	25	10	10	$211.40
Demographic questionnaire	48	1	15	5	4	84.56
Post study questionnaire	48	2	60	20	32	676.48
Total					46	972.44

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44. U.S.C. Chapter 35, as amended; 5 CFR part 1320; and 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2014–05368 Filed 3–12–14; 8:45 am]

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[4] The number of respondents in this table includes drop-out rates.

[5] Estimated based on the mean hourly rate for Michigan (all occupations) is $21.14 as reported in the May 2011 Occupational Employment and Wage Estimates, Bureau of Labor Statistics. *http://www.bls.gov/oes/oes_dl.htm.*

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35791]

Union Pacific Railroad Company—Acquisition and Operation Exemption—Brownsville and Matamoros Bridge Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 for Union Pacific Railroad Company (UP), a Class I rail carrier, to acquire and operate 0.8 miles of rail line owned by Brownsville and Matamoros Bridge Company (B&M), between UP milepost 0.59 (B&M milepost 0.80) to the international border with Mexico located at the center point of B&M's railroad bridge (B&M milepost 0.00). B&M is a common carrier by railroad but does not perform railroad operations itself. Historically, UP has conducted all operations on the line. Upon consummation of the transaction, UP will relocate overhead traffic to a newly constructed line outside the city of Brownsville, Tex. This exemption is subject to standard labor protective conditions.

DATES: This exemption will be effective on April 2, 2014. Petitions to stay must be filed by March 21, 2014. Petitions to reopen must be filed by March 28, 2014.

ADDRESSES: Send an original and 10 copies of all pleadings referring to Docket No. FD 35791 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of pleadings to: Mack H. Shumate, Jr., 101 North Wacker Drive, #1920, Chicago, IL 60606.

FOR FURTHER INFORMATION: Amy Ziehm, (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision served on March 13, 2014, which is available on our Web site at *www.stb.dot.gov.*

Decided: March 10, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–05510 Filed 3–12–14; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassifying the Tidewater Goby From Endangered to Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2014–0001; FXES11130900000C6–123–FF09E30000]

RIN 1018–AY03

Endangered and Threatened Wildlife and Plants; Reclassifying the Tidewater Goby From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to reclassify the tidewater goby (*Eucyclogobius newberryi*) as threatened under the Endangered Species Act of 1973, as amended (Act). The species is currently listed as endangered. After review of all available scientific and commercial information, we find that reclassifying the tidewater goby as threatened is warranted, and, therefore, we propose to reclassify tidewater goby as threatened under the Act. We are seeking information and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before May 12, 2014. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by April 28, 2014.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R8–ES–2014–0001, 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!''
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2014–0001; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all 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).

Copies of documents: This proposed rule is available on *http://www.regulations.gov.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service (Service), Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Deputy Field Supervisor, telephone: 805–644–1766. Direct all questions or requests for additional information to: TIDEWATER GOBY QUESTIONS, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

On May 18, 2010, we received a petition dated May 13, 2010, from The Pacific Legal Foundation, requesting that the tidewater goby be reclassified as threatened under the Act. We published a 90-day finding on January 19, 2011 (76 FR 3069), that stated our conclusion that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. This document serves as the 12-month finding for the petition, as well as a proposed rule to reclassify the tidewater goby as threatened.

Description of Proposed Action

On February 4, 1994, we listed the tidewater goby as endangered based on the threats described below in the *Previous Determinations Regarding the Tidewater Goby* section of this proposed rule.

According to the Act and our regulations at 50 CFR 424.11(c), a species may be reclassified if the best scientific and commercial data available substantiate that the species is no longer endangered because of the following 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. After review of all available scientific and commercial information, we find that reclassifying the tidewater goby as threatened is warranted for the following reasons:

(1) The number of localities known to be occupied has nearly tripled since listing (from 43 to 114; see 78 FR 8746).

(2) The increase in occupied localities indicates that the tidewater goby is more resilient in the face of severe drought events than believed at the time of listing.

(3) Threats identified at the time of listing have been reduced or are not as serious as previously thought. Threats appeared more pervasive due to the severe drought from 1987 to 1992.

(4) Sea level rise poses a substantial threat to the species that, while not an imminent threat, is likely to lead to the species becoming endangered in the foreseeable future.

We conclude that the endangered designation no longer correctly reflects the current status of the species and the tidewater goby is more appropriately classified as a threatened species.

Information Requested

We want any final rule resulting from this proposal to be as effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit information, comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible. We are specifically requesting information regarding:

(1) The potential effects of climate change on the tidewater goby's status, especially in regard to sea level rise;

(2) Progress toward completion of metapopulation viability analyses for the species;

(3) Any previously unknown threats not discussed in this proposed rule or threats that may be having an effect of the tidewater goby's status not fully analyzed in this proposed rule;

(4) The development of management plans within the tidewater goby's range since its listing in 1994 that may have positive effects on the species' conservation; and

(5) The appropriate taxonomic classification of the tidewater goby (particularly regarding the southern California populations), along with any

additional supporting genetic, morphological, or other information.

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 (16 U.S.C. 1531 *et seq.*) 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 the proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in the **DATES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If 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, Ventura 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.

Peer Review

In accordance with our joint policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Peer reviewers will conduct an assessment of the proposed rule, and the specific assumptions and conclusions regarding the proposed downlisting. 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.

Previous Federal Action

On October 24, 1990, we received a petition to add the tidewater goby to the Federal List of Endangered and Threatened Wildlife. We published a finding on March 22, 1991, that listing the tidewater goby as endangered may be warranted (56 FR 12146). A proposal to list the species as endangered was published on December 11, 1992 (57 FR 58770), and following a public comment period, we listed the tidewater goby as endangered throughout its entire range on February 4, 1994 (59 FR 5494).

On June 24, 1999, the Service published a proposed rule to remove the northern populations of tidewater goby from the List of Endangered and Threatened Wildlife (delist), concurrent with a proposal to keep listed as endangered a distinct population segment (DPS) of tidewater goby in Orange and San Diego Counties (64 FR 33816). On November 7, 2002, we withdrew the proposed delisting and DPS designation rule because we determined, based upon comments received, that our specific conclusions in the proposal were not corroborated by the information we received during three comment periods (67 FR 67803). Withdrawing the delisting proposal for the northern populations of the tidewater goby made the establishment of an endangered southern California DPS unnecessary.

On February 6, 2013, we published a final rule designating critical habitat in 65 units covering 12,156 acres in California (78 FR 8746). Details on the history of legal actions related to the critical habitat designation can be found in that final rule.

We finalized the recovery plan for the tidewater goby on December 7, 2005. A detailed discussion of the recovery plan and the downlisting and delisting criteria are provided below in the ''Recovery Plan'' section, following the analysis of the statutory factors.

We published a notice announcing the initiation of a 5-year status review for the tidewater goby under section 4(c)(2) of the Act on March 22, 2006 (71 FR 14538), and requested information from the public concerning the status of the tidewater goby (71 FR 14538). We notified the public of completion of the 5-year review on March 5, 2008 (73 FR 11945). In the 5-year review, completed on September 28, 2007, we recommended that the tidewater goby be reclassified as threatened because we concluded that the species was not in imminent danger of extinction. A copy of the 2007 5-year review for the tidewater goby is available on the Service's Environmental Conservation Online System (*http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=E071*) and at *http://www.regulations.gov.*

On May 18, 2010, we received a petition dated May 13, 2010, from The Pacific Legal Foundation, requesting that the tidewater goby be reclassified as threatened under the Act. The petitioner cited the 5-year review of the tidewater goby's status completed by the Service in 2007 to support the petition. We published a 90-day finding on January 19, 2011 (76 FR 3069), concluding that the petition presented substantial scientific or commercial information indicating that the petitioned action (reclassification of the tidewater goby) may be warranted. This proposed rule constitutes the 12-month finding on the May 13, 2010, petition to reclassify the tidewater goby as threatened.

Background

Species Information

Species Description and Taxonomy

The tidewater goby is a small, elongate, gray-brown fish that rarely exceeds 5 centimeters (cm) (2 inches (in)) in length (Service 2005, p. 2). This species possesses large pectoral fins, and the pelvic or ventral fins are joined to each other below the chest and belly from below the gill cover back to just anterior of the anus. Male tidewater gobies are nearly transparent with a mottled brownish upper surface. Female tidewater gobies develop darker colors,

often black, on the body and dorsal and anal fins. Tidewater gobies have two dorsal fins set very close together or with a slightly confluent membrane. The first dorsal fin has five to seven slender spines, the second 11 to 13 soft, branched rays. The anal fin has 11 to 13 rays as well. The median fins are usually dusky, and the pectoral fins are transparent.

The tidewater goby is the only member of the genus *Eucyclogobius* in the Family Gobiidae. It was first described by Girard (1856), and Gill (1863) proposed it as a new species *Eucyclogobius newberryi* to distinguish the tidewater goby from other members of the family. *Eucyclogobius newberryi* is the currently published scientific name for the tidewater goby.

Distribution

The geographic range of the tidewater goby is limited to the coast of California (Eschmeyer *et al.* 1983, p. 262; Swift *et al.* 1989, p. 12). The species historically occurred from 5 kilometers (km) (3 miles (mi)) south of the California-Oregon border (Tillas Slough in Del Norte County) to 71 km (44 mi) north of the United States-Mexico border (Agua Hedionda Lagoon in San Diego County). The available documentation suggests the northernmost locality that forms one end of the historical and current geographic range of the tidewater goby has not changed over time (see for example, Eschmeyer *et al.* 1983, p. 262; Swift *et al.* 1989, p. 12). Tidewater gobies do not currently occur in Agua Hedionda Lagoon, and the species' southernmost known extant occurrence is the San Luis Rey River 8 km (5 mi) north of Agua Hedionda Lagoon. Although the northernmost and southernmost extent of the tidewater goby's range has not changed much over time, the species' distribution within the historical range has become patchy and fragmented.

Tidewater gobies are naturally absent from several large (80 to 217 km (50 to 135 mi)) stretches of coastline lacking lagoons or estuaries, and with steep topography or swift currents that may prevent the species from dispersing between adjacent localities (Earl *et al.* 2010, p. 104; Swift *et al.* 1989, p. 13). One such gap of approximately 160 km (100 mi) occurs from the Eel River in Humboldt County to Ten Mile River in Mendocino County. A second gap of approximately 97 km (60 mi) occurs between Lagoon Creek in Mendocino County to Salmon Creek in Sonoma County. Another large, natural gap of approximately 160 km (100 mi) occurs between the Salinas River in Monterey County and Arroyo del Oso in San Luis Obispo County. The southernmost gap, which is most likely the result of habitat loss and alteration, occurs between the Los Angeles Basin (city of Santa Monica, western Los Angeles County) and San Mateo Creek (Marine Corps Base (MCB) Camp Pendleton, San Diego County), a distance of approximately 130 km (80 mi).

Habitat loss and other anthropogenic (human—caused) factors have resulted in the tidewater goby now being absent from several localities where it historically occurred. These disappearances from specific localities have created smaller, artificial gaps in the species' geographic distribution (Capelli 1997, p. 7). Such localities include San Francisco Bay in San Francisco and Alameda Counties, and Redwood Creek and Freshwater Lagoon in Humboldt County. In central and northern California, Swift (*in litt.* 2007) believes it very unlikely that genetic interchange is possible between several groups of populations naturally separated by 32 km (20 mi) or more of rugged coastline. As anthropogenic gaps are created of equal or greater distance, recolonization and genetic exchange becomes less likely.

Swift *et al.* (1989, p. 13) reported that, as of 1984, tidewater gobies occurred, or had been known to occur, at 87 localities. This included localities at the extreme northern and southern end of the species' historical geographic range. An assessment of the species' distribution in 1993, using records that were limited to the area between the Monterey Peninsula in Monterey County and the United States-Mexico border, found tidewater gobies occurring at four additional sites since 1984 (Swift *et al.* 1993, p. 129). Other tidewater goby localities have been identified since 1993. Considering all of the known historical and currently occupied sites, tidewater gobies have been documented at 135 localities. Of these localities, gobies have been extirpated from 21 (16 percent), for a total of 114 localities that are known to be currently occupied (78 FR 8746) (see Figure 1); however, these localities are not regularly monitored, so the status of tidewater goby in many of these places may have changed since they were last surveyed.

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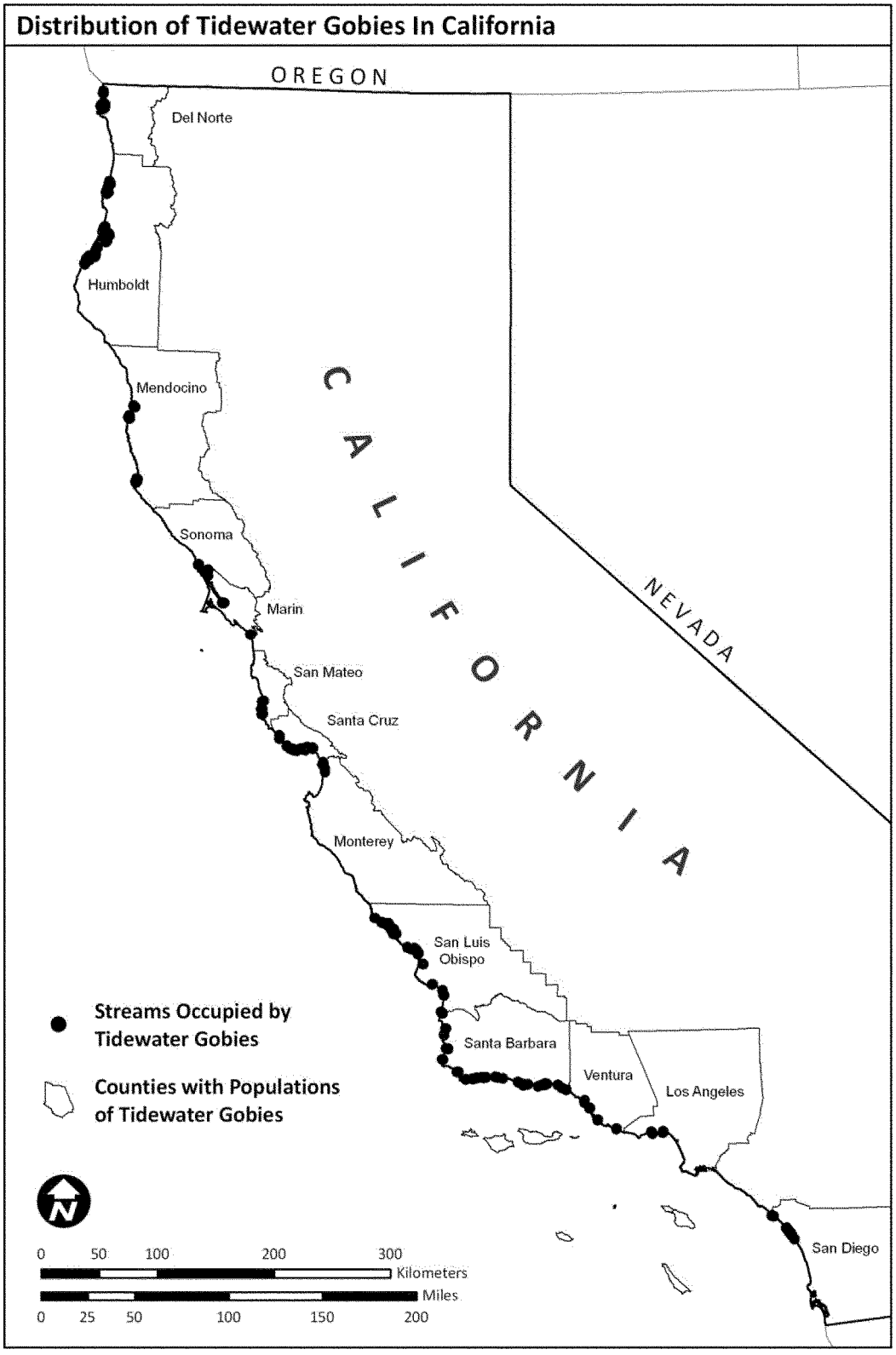
Figure 1



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Habitat

The tidewater goby inhabits lagoons, estuaries, backwater marshes, and freshwater tributaries to estuarine environments that closely correspond to major stream drainages. Sediments provided by major drainages produce sandy beaches with low-lying coastal areas conducive to formation of coastal lagoons (Habel and Armstrong 1977, p. 6; Swift *et al.* 1989, p. 13). Tidewater

gobies generally select habitat in the upper estuary, usually within the freshwater-saltwater interface. Although they may range upstream a short distance into freshwater, and downstream into water of up to about 75 percent saltwater (28 parts per thousand), the species is typically found in salinities of less than 12 parts per thousand (Swift *et al.* 1989, p. 7). These conditions occur in two relatively distinct situations: (1) The upper edge of large tidal bays, such as Tomales and Bolinas Bays near the entrance of freshwater tributaries; and (2) the coastal lagoons formed at the mouths of coastal rivers, streams, or seasonally wet canyons.

The areas that tidewater gobies occupy are dynamic environments that are subject to considerable fluctuation on a seasonal and annual basis. For example, the formation of a sandbar at the mouth of a lagoon occurs in the late spring as freshwater flows into the lagoon decline enough to allow the ocean to build up the sandbar through wave action on the beach. Winter rains and subsequently increased stream flows may bring in considerable sediment and dramatically affect the bottom profile and substrate composition of a lagoon or estuary. Fine mud and clay either move through the lagoon or estuary or settle out in the backwater marshes, while heavier sand is left in the lagoon or estuary. High flows associated with winter rains can scour out the lagoon bottom, with sand building up again after flows decline. These dynamic processes result in wetland habitats that, over time, change in location relative to stationary features that exist outside the flood zone (such as roads or buildings).

Tidewater gobies appear to be adapted to this broad range of environmental conditions (Worcester and Lea 1996, no pagination). Individuals held at the Granite Canyon Fish Culture Facility were subjected to a salinity tolerance test in hypersaline water (45 to 54 parts per thousand) for 6 months, with no mortality (Worcester and Lea 1996, no pagination). (The natural salinity of seawater ranges from 33 to 37 parts per thousand.) Holding temperatures (freshwater) varied from 4.0 to 21.5 degrees Celsius (C°) (39.2 to 70.7 degrees Fahrenheit (F°)). During the late 1980s and early 1990s, Karen Worcester (Morro Bay Estuary Program) conducted an investigation of habitat use in Pico Creek lagoon, and observed large numbers of tidewater gobies using the lower portion of the lagoon where highest salinities (up to 27 parts per thousand) were observed. In general, abundance did not appear to be associated with oxygen levels, which at times were quite low (Service 2007, p. 11).

While tidewater gobies tolerate a wide range of salinity and water quality conditions, Smith (*in litt.* 2007) reports that sandbar formation is important to produce the calm conditions that bring about the very abundant late summer populations. Periodic natural or artificial breaching of sandbars in summer reverses the freshening process, and sandbar re-formation produces stratified salinity conditions, with resultant warm and hypoxic (lacking oxygen) bottom conditions unsuitable for benthic invertebrates and for lagoon fish. As a result, artificial breaching or lack of sandbar formation may result in smaller populations that are restricted to areas upstream of tidal action (where salinity is lower and dissolved oxygen is higher). Open lagoons can sometimes provide some marginal habitat for fish near the tidally mixed mouth, but the substantially reduced remainder of the lagoon tends to be stratified, warm, and relatively unproductive. Partially closed lagoons tend to have warm, stratified conditions except every 2 weeks when very high tides cool and mix the lagoon.

Tidewater gobies also depend on calm backwaters as refuges against storm flows and/or draining of small lagoons when the sandbar is opened in winter. Populations are apparently periodically lost and then recolonize lagoon systems that provide poor winter refuges in flood years (such as Aptos, Soquel, and Moran lagoons in Santa Cruz County). At several localities, tidewater gobies have been apparently extirpated from lagoons that lack winter refugia (Waddell Lagoon in northern Santa Cruz County, for example).

Another feature of lagoons important to the tidewater goby is the availability of sediments for burrow construction and spawning. The sediments are usually spread quite evenly by declining flows; lagoons often end up only 1 to 2 meters (m) (3.3 to 6.6 feet (ft)) deep despite a width of 30 to 150 m (100 to 500 ft) or more (Habel and Armstrong 1977, pp. 4–7). This pattern holds true even in larger systems, such as the Santa Ynez River (Santa Barbara County) and Santa Margarita River (San Diego County). Half or more of the substrate of the lagoon will be soft sand, with mud in backwaters. Some rocks or gravel may be present, mostly at the upper (inlet) and lower (outlet) ends where constricted flow directly scours the channel. These rocks are exposed by high water flow. Declining flows continue to bring in sand that often covers the rocks by early spring.

Life History

Tidewater gobies generally live for only 1 year, with few individuals living longer than a year (Moyle 2002, p. 432). They may reproduce only once during their lifetime. Reproduction can occur at any time of the year, but it tends to peak from late April or May to July, and can continue into November, depending on seasonal temperatures and rainfall (Swenson 1999, p. 107). Fluctuations in rates of reproduction are probably due to death of breeding adults in early summer and colder temperatures or hydrological disruptions in winter (Swift *et al.* 1989, p. 107). Reproduction takes place in water between 9 to 25 C° (48 to 77 F°) at salinities of 2 to 27 parts per thousand (Swenson 1999, p. 103).

Male tidewater gobies begin digging vertical breeding burrows approximately 10 to 20 cm (4 to 8 in) deep in relatively unconsolidated, clean, coarse sand (averaging 0.5 millimeter (mm) (0.02 in) in diameter), after lagoons are closed off to the ocean by natural berms (Swift *et al.* 1989, p. 3; Swenson 1995). After the female lays eggs in the burrow, the male guards the eggs until they hatch. The larval gobies move to midwater vegetation until they mature enough to become benthic (free-swimming) and breed the next season.

Metapopulation Dynamics

Local populations of tidewater gobies are best characterized as metapopulations (Lafferty *et al.* 1999a, p. 1448). A metapopulation is a collection of populations separated by geographic distance, but connected by dispersing individuals. Local tidewater goby populations that occupy coastal lagoons and estuaries are usually separated from each other by the open ocean. Very few tidewater gobies have ever been captured in the marine environment (Swift *et al.* 1989, p. 7), which suggests this species rarely occurs in the open ocean. Studies suggest that some tidewater goby populations are persistent (Lafferty *et al.* 1999a, p. 1452), while other tidewater goby populations appear to experience intermittent extirpations. These extirpations may result from one or a series of factors, such as the drying up of some small streams during prolonged droughts (Lafferty *et al.* 1999a, p. 1451).

Some of the areas where tidewater gobies have been extirpated apparently have been recolonized when extant populations were present within a relatively short distance of the extirpated population. For example, Lafferty *et al.* (1999b, p. 621) concluded that tidewater gobies had recolonized Cañada Honda Creek in Santa Barbara

County from the Santa Ynez River approximately 9 km (5.5 mi) to the north. Recolonization may be occurring when high freshwater flows into lagoons and estuaries cause the entrance to the system to be breached and connect directly to the ocean. The high flows may flush tidewater gobies into the ocean and allow them to move up or down the coast with longshore currents and into adjacent lagoons where the species had been extirpated (Lafferty *et al.* 1999b, p. 621). These recolonization events suggest that tidewater goby populations exhibit a metapopulation dynamic where some populations survive or remain viable by continually exchanging individuals and recolonizations after occasional extirpations (Doak and Mills 1994, p. 619). They also suggest that flooding may sometimes have a positive effect by contributing to recolonization of localities where a tidewater goby population has become extirpated.

The largest wetland habitats where tidewater gobies have been known to occur are not necessarily the most secure, as evidenced by the fact that the Santa Margarita River in San Diego County and the San Francisco Bay have lost their populations of the tidewater goby. Water quality, habitat modification, and the introduction of numerous nonnative fish species (both competitors and predators) may have caused the tidewater goby to disappear from both areas (Service 2005, pp. 18–21, Appendix E). Today, the majority of the most stable and largest tidewater goby populations consist of lagoons and estuaries of intermediate sizes (2 to 50 hectares (ha) or 5 to 125 acres (ac)) that have remained relatively unaffected by human activities (Service 2005, p. 12). Many of the localities where tidewater gobies are persistent are likely to be ''source'' populations, and such localities probably provide the colonists for localities that intermittently lose their tidewater goby populations.

Historical records and survey results for several localities occupied by the tidewater goby are available (see Swift *et al.* 1989, pp. 18–19; Swift *et al.* 1994, pp. 8–16). These documents suggest the persistence of tidewater goby populations is related to habitat size, configuration, location, and proximity to human development. In general, the most stable and persistent tidewater goby populations occur in the lagoons and estuaries that are more than 1 ha (2.47 ac) in size and that have remained relatively unaffected by human activities (Lafferty *et al.* 1999a, pp. 1450–1453). We note, however, that some systems that are affected or altered by human activities also have relatively large and stable populations (for example, Humboldt Bay in Humboldt County, Pismo Creek in San Luis Obispo County, Santa Ynez River in Santa Barbara County, and the Santa Clara River in Ventura County). Also, some habitats less than 1 ha (2.47 ac) in size have tidewater goby populations that persist (Swift *et al.* 1997, p. 3). The best available information suggests that the lagoons and estuaries that have persistent populations are likely the source populations that provide individuals that colonize adjacent, smaller localities that have ephemeral tidewater goby populations (Lafferty *et al.* 1999a, p. 1452).

Genetics

Various genetic markers demonstrate that pronounced differences in the genetic structure of tidewater goby metapopulations exist, and that tidewater gobies in many localities are genetically distinct. Genetic variability across a species' distribution may be important to long-term species persistence because it represents the raw material for adaptation to differing local conditions and environmental change (Frankham 2005, p. 754). A study of mitochondrial control region and cytochrome b DNA sequences (molecular material used in genetic studies) from tidewater gobies that were collected at 31 localities throughout the species' geographic range has identified six major phylogeographic units (Dawson *et al.* 2001, p. 1171). These six regional units include the following areas: (1) North Coast (NC) Unit: Tillas Slough (Smith River) in Del Norte County to Lagoon Creek in Mendocino County; (2) Greater Bay (GB) Unit: Salmon Creek in Sonoma County to Bennett's Slough in Monterey County; (3) Central Coast (CC) Unit: Arroyo del Oso to Morro Bay in San Luis Obispo County; (4) Conception (CO) Unit: San Luis Obispo Creek in San Luis Obispo County to Rincon Creek in Santa Barbara County; (5) Los Angeles-Ventura (LV) Unit: Ventura River in Ventura County to Topanga Creek in Los Angeles County; and (6) South Coast (SC) Unit: San Pedro Harbor in Los Angeles County to Los Peñasquitos Lagoon in San Diego County. These units correspond to the recovery units identified in the recovery plan for the tidewater goby (Service 2005).

A more recent study to gather genetic distribution data for tidewater goby (Earl *et al.* 2010) used microsatellite DNA (versus the mitochondrial control region and cytochrome b DNA used by Dawson *et al.* 2001). Earl *et al.* concluded the following: (1) Populations of tidewater goby in northern San Diego County form a clade (a group of organisms that are more closely related to each other than any other group, implying a shared common ancestor) that has been reproductively isolated from all others for more than 2 million years (Earl *et al.* 2010, p. 112), and which appears to merit formal description as a species-level taxon; (2) populations along the mid-coast of California are sub-divided into regional groups, which are more similar to each other than different as believed from previous studies based on mitochondrial DNA (such as Dawson *et al.* 2001); and (3) the tidewater goby dispersed widely during a sea-level rise event approximately 7,000 years ago that connected separate watersheds, followed by increased isolation as the oceans receded again, resulting in geographic separation in the northernmost populations descended from a common ancestor (Earl *et al.* 2010, p. 111).

The conclusion that the North Coast populations of tidewater goby formed as a result of a single, evolutionarily recent episode of colonization of newly formed habitats is supported by McCraney and Kinziger (2009). They compared genetic variation of 13 naturally and artificially fragmented populations of tidewater goby in Northern California, including eight Humboldt Bay populations and five coastal lagoon populations, and made conclusions similar to Earl *et al.* (2010). McCraney and Kinziger (2009) also concluded that natural and artificial habitat fragmentation caused marked divergence among tidewater gobies in the North Coast populations. Their study showed that Humboldt Bay populations, due to isolation by manmade barriers, exhibited very high levels of genetic differentiation between populations, extremely low levels of genetic diversity within populations, and no migration among populations. They concluded that this pattern makes the Humboldt Bay populations of tidewater goby vulnerable to extirpation. In contrast, the study found that while coastal lagoon populations also exhibited very high levels of genetic differentiation between populations, the coastal lagoon populations displayed substantial levels of genetic diversity within populations, indicating occasional migration among lagoons (McCraney and Kinziger 2009, p. 32).

All coastal lagoons, with exception of Lake Earl in Del Norte County, appear to be stable and genetically healthy (McCraney and Kinziger 2009, p. 34). The Lake Earl population exhibited reduced levels of genetic diversity in comparison to similar coastal lagoon

populations (McCraney and Kinziger 2009. p. 34). They further concluded that reduced genetic diversity detected within Lake Earl is likely due to repeated population bottlenecking (previous reduction in population size that results in the population being descended from a small number of individuals, resulting in reduced genetic diversity within the population) that is a result of regular artificial breaching of the lagoon mouth.

Earl *et al.* (2010, p. 112) have suggested that the southern population of the tidewater goby to the south of the gap between Los Angeles and Orange Counties may merit formal description as a distinct species based on their different genetic makeup. However, a formal description has not yet been published. The Service is evaluating the genetic and taxonomic information to determine if it would be appropriate to consider listing the tidewater goby as separate species or other taxonomic units. For example, this could include considering listing a goby species or taxonomic unit to the south of Los Angeles County and another to the north. We are requesting information and comments on this distinction.

The conclusions from these genetic studies are: (1) Tidewater gobies exhibit considerable genetic diversity across their range; (2) the species can be divided into six phylogeographic units based on genetic similarities and differences; (3) the tidewater gobies to the south of the gap between Los Angeles and Orange Counties may be a distinct species based on their divergent genetic makeup compared to populations to the north; (4) the northernmost populations are also genetically distinct from other tidewater goby populations; (5) the populations at the north end of the species' distribution probably arose from a common ancestor at the end of sea level rises 7,000 years ago; and (6) natural and anthropogenic barriers have contributed to genetic differentiation among populations.

Previous Determinations Regarding the Tidewater Goby

Listing Rule

The 1990 petition to list the tidewater goby was submitted at the end of an extended drought in California that resulted in loss of habitat for the tidewater goby and severe declines in the number of occupied localities. In the 1994 listing rule (59 FR 5494), we made our determination that the tidewater goby was endangered based on the following: (1) The tidewater goby had been extirpated from nearly 50 percent of the lagoons and estuaries it had inhabited due to habitat alteration (channelization, water diversions, etc.) and drought; (2) only 43 populations remained, of which only 8 were considered large enough to be stable; (3) the tidewater goby was threatened by development, water quality issues, and other habitat alterations; and (4) the tidewater goby's downward trend was likely to continue regardless of the end of the drought due to the other threats acting on the species.

Proposed Delisting Rule

In the 1999 proposed rule to delist the northern populations of the tidewater goby (64 FR 33816), we identified three major reasons for our proposed action: (1) There were more populations in the north than were known at the time of listing (85 extant populations); (2) threats to those populations were less severe than previously believed; and (3) the tidewater goby has a greater ability than was known at the time of listing to recolonize sites from which it is temporarily absent. On November 7, 2002, we withdrew the proposed delisting and DPS designation rule because we determined, based upon comments received, that our specific conclusions in the proposal were not corroborated by the information we received during three comment periods (67 FR 67803). We determined that the information provided by the scientific community indicated that our 1999 assessment of the importance of new tidewater goby populations and the recolonization ability of the tidewater goby in the proposed delisting rule were premature, and agreed that it was prudent to wait and assess the persistence of these populations for a longer period of time. Withdrawing the delisting proposal for the northern populations of the tidewater goby made the establishment of an endangered southern California DPS unnecessary. We stated that we would focus on proceeding with the recovery planning process that would both guide conservation activities for the species and make explicit under what criteria the tidewater goby should be considered for delisting. Importantly, at the time of the withdrawal of the proposed delisting rule, we did not evaluate the appropriateness of downlisting the species instead of delisting, and we did not attempt to provide a more in-depth analysis of the magnitude and imminence of the various threats to the species.

5-Year Review

In conducting the 5-year status review (Service 2007), we performed an in-depth analysis of the magnitude and imminence of the various threats to the tidewater goby in light of the distribution of the species, and concluded that the tidewater goby should be reclassified as threatened because the species was not in imminent danger of extinction. The main reasons for this conclusion were: (1) The number of localities known to be occupied had increased since listing from 43 to 106; (2) the increase in occupied localities indicated the tidewater goby was more resilient in the face of severe drought events than believed at the time of listing; and (3) threats identified at the time of listing had been reduced or were not as serious as previously thought. We also concluded that there was a high likelihood that the results of ongoing genetic studies would indicate potential changes to the tidewater goby taxonomic classification, and that we should review those results prior to publication of a proposed downlisting rule.

Summary of Previous Determinations

At the time of its listing as endangered in 1994: (1) The tidewater goby had been extirpated from nearly 50 percent of the lagoons and estuaries it had inhabited due to an extended drought combined with habitat alteration (channelization, water diversions, etc.); (2) only 43 populations remained, of which only eight were considered large enough to be stable; and (3) the tidewater goby was threatened by development, water quality issues, and other habitat alterations. We concluded that these factors were severe enough that the tidewater goby was in a downward trend that would continue regardless of the end of the 1987–1992 drought. When we prepared a review of the species' status in 2007, the number of known occupied localities had increased to 106 at that time, and it was apparent that the predicted downward trend was in error. Although the other threats identified at the time of listing continued to impact the goby, we concluded that the main reason for the species' decline at the time of listing was the drought, and that the tidewater goby was more resilient than expected.

In the following sections, we analyze the current threats to the species to determine if their severity and magnitude have increased, decreased, or remain unchanged from the time of listing. We also evaluate whether any changes in these threats are sufficient to warrant reclassification of the tidewater goby.

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 vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or human made factors affecting its continued existence. A species may be reclassified on the same basis.

Determining whether the status of a species has improved to the point that it can be downlisted 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 word ''range'' in the significant portion of its range phrase refers to the range in which the species currently exists at the time of this status review. 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.

The following analysis examines all five factors currently affecting, or that are likely to affect, the tidewater goby within the foreseeable future.

The tidewater goby was listed as endangered on February 4, 1994 (59 FR 5494). We made our determination based on the following: (1) The tidewater goby had been extirpated from nearly 50 percent of the lagoons and estuaries it had inhabited; (2) only 43 populations remained, and only eight of those were considered large enough to be stable; (3) the tidewater goby would continue to be at risk due to development, water quality issues, and other habitat alterations; and (4) the tidewater goby's downward trend was likely to continue regardless of the end of the drought due to the other threats acting on the species.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Capelli (1997, p. 7) estimated that 75 to 90 percent of the original estuarine acreage of California had been lost since 1850. Many of these wetlands were probably entirely lost to development (including development of harbors, channels, agriculture, industrial and business uses, residential development, and road construction) before surveys for tidewater gobies were being conducted. For example, over 95 percent of the wetlands that existed prior to 1850 in the San Francisco Bay have been lost (U.S. Geological Survey 2003), most of which were filled in entirely and are now covered by development.

By 1994, when the tidewater goby was listed, researchers believed that the species had been extirpated from nearly 50 percent of the lagoons within its historical range and that only 43 occupied localities remained (59 FR 5497). The final rule stated that the tidewater goby had experienced a substantial decline throughout its historical range and faced threats indicating the downward trend would continue because the species lives within specific habitat zones that have been, and would continue to be, targeted for development and degraded by human activities. In our 5-year review of the species (Service 2007), we recommended downlisting the tidewater goby to threatened because we concluded, in part, that threats such as habitat loss were not as severe as originally believed, as shown by the species' rebound from the drought (the number of occupied localities had increased from 43 to 106 at that time) despite continued effects of development and altered wetlands.

According to the recovery plan, approximately 55 to 70 of the localities recolonized since the listing in 1994 are naturally so small or have been so degraded over time that long-term persistence is uncertain (Service 2005, p. 6). By our calculation, approximately 60 percent of the recolonized localities are classified ''small habitat size'' (Service 2005, Appendix E). These small habitat areas are more likely to support ephemeral tidewater goby populations that may disappear when adverse conditions, such as drought or a rise in sea level (discussed below), affect the region (Lafferty *et al.* 1999a, p. 1452). Larger core or source populations may persist through conditions that would extirpate small populations. According to the recovery plan (Service 2005, Appendix E), 10 of these large core or source populations (described as large habitat size, abundant population density, regular presence) are known to exist.

Habitat Loss, Hydrology, and Sandbar Breaching

As described above, an estimated 75 to 90 percent of estuarine wetlands that possibly could have supported tidewater gobies have been lost in California (Capelli 1997, p. 7). Consequently, tidewater gobies likely occurred historically in more localities than at present. In many cases, these losses resulted in artificial gaps between localities or the widening of existing gaps. The habitat at many of these historical localities was lost to development (for example, harbors, channels, agriculture, industrial and business uses, residential development, road construction) before surveys for tidewater gobies were being conducted (see San Francisco Bay example, above). Most of these wetlands were filled in entirely and are now covered by development. Given that tidewater gobies may be able to disperse along sandy shores to some degree, it is likely that tidewater gobies in the southern portion of their range occupied estuaries and lagoons along the shores from Palos Verdes to the headlands at La Jolla when and where appropriate intermittently closed habitat occurred (Jacobs, *in litt.* 2007). Nearly all of this habitat has been opened for marinas and harbors (or closed to create freshwater impoundments). This has produced an anthropogenic (human-caused) gap between those occupied localities in Los Angeles and San Diego Counties of at least 130 km (80 mi).

Large areas of estuarine and coastal wetland habitat and many smaller estuaries and lagoons had been lost prior to the enactment of certain regulations that protect wetlands. Those losses that occurred in the past have largely been eliminated as a result of current laws and regulations protecting coastal habitats (see section below on Factor D). Although major habitat loss is

now unlikely, minor habitat disturbances (mostly less than one acre) will continue to occur throughout the tidewater goby's range, which in turn will result in impacts to the species. The amount of habitat disturbed varies widely from year-to-year, and we have no way of predicting how much will occur in any given year. However, Toline *et al.* (2006, no pagination) reported that since the tidewater goby was listed in 1994, over 100 biological opinions had been written by the Service to address adverse effects to the species (averaging approximately 8 projects per year, none of which posed jeopardy to the species). Projects covered by these biological opinions included: Flood control projects, removal of pipelines, bridge or crossing replacement and installations, water diversions, channel maintenance, sand and gravel extraction, and others. Many of these projects had a temporary effect on tidewater goby habitat, but some resulted in permanent changes, such as creation of permanent connections to seawater and channelization to encourage flushing of estuaries, that continue to have adverse effects on the tidewater goby throughout its range.

Some type of habitat degradation has occurred or is currently occurring throughout the current range of the species (Service 2005, Appendix E). Examples of ongoing activities that are occurring within tidewater goby habitat include annual dredging (such as that at Goleta Slough, Santa Barbara County), habitat restoration projects that are not compatible with tidewater goby needs (examples include Malibu Lagoon, Los Angeles County; Mission Creek, Santa Barbara County), and bridge widening projects (like Mission Creek). These projects are small in scale compared to large-scale habitat losses that occurred in the past; however, even small projects can have substantial effects on the species. One example of a small project that had a substantial effect on a tidewater goby population was repair work that began on February 24, 1998, on railroad trestles crossing San Mateo Creek Lagoon, San Diego County. This work included dredging portions of the creek and lagoon, and filling freshwater marshes that functioned as tidewater goby refugia. Previous surveys had found tidewater gobies to be abundant, but no tidewater gobies were found after the construction was completed (Swift and Holland 1998, pp. 5–7). The locality has since been recolonized or the numbers have rebounded after being driven to undetectable levels by the project (Toline *et al.* 2006, no pagination).

Based on the best available information, we conclude that these small projects generally have isolated, temporary effects and are not, by themselves, likely to significantly reduce the number of localities occupied by the tidewater goby in the future, compared to the extensive habitat losses that occurred prior to the species' listing in 1994. Our conclusion is based on the fact that the species continues to occupy those localities where these minor projects have occurred. Also, the current information indicates the tidewater goby has the capacity to recover from a severe drought that reduced its numbers dramatically, despite the ongoing effect of these smaller habitat disturbances.

Prior to the listing of the tidewater goby, modifications to the hydrology upstream of the lagoons and estuaries were common. These changes ranged from the installation and operation of tide gates (such as those at Humboldt Bay) to channelization for flood control. The functioning of these structures is intended to control water entering the lagoons from the watershed, and they are typically operated to minimize flooding of adjacent low-lying features like roads and buildings. McCraney *et al.* (2010, p. 3325) showed that artificial fragmentation of tidewater goby populations, such as those in Humboldt Bay caused by floodgates and levees, can lead to genetic isolation and possibly interfere with the long-term persistence of the tidewater goby in some localities. These current operations and potential future modifications for flood control do not mimic the natural conditions that tidewater gobies require for reproduction and may adversely influence salinities and the distribution of tidewater gobies in localities where they occur.

One method of controlling water levels in lagoons and estuaries is the breaching of sandbars. Such breaching occurs throughout the range of the tidewater goby. The main purpose of authorized breaching (pursuant to existing regulations) is to prevent inundation of nearby roads and private property (such as that at Lake Earl, Del Norte County and Goleta Slough, Santa Barbara County). Unauthorized breaching occurs periodically at the mouth of the Santa Clara River; the purpose is unknown but may be intended to expose mudflats for shorebirds, to enhance local surfing conditions, or to prevent inundation of the adjacent campgrounds at McGrath State Beach. In some instances, breaching is intended to move the stagnant water behind the sandbar out to the ocean due to the offensive odor or poor water conditions (Malibu Lagoon, Los Angeles County, for example). At the Bolsa Chica Reserve in Orange County, the lagoon has been permanently breached to encourage saltwater flow into the lagoon for the benefit of nesting birds such as plovers, terns, and gulls, and is no longer viable as tidewater goby habitat. Whatever the reason, breaching of sandbars drains lagoons and estuaries and results in habitat alterations that strand tidewater gobies and their eggs, leaving them vulnerable to predation by seabirds or desiccation, and may disrupt the normal breeding cycle (depending on when breaching occurs) (Capelli 1997, pp. 8–10). Where it happens, sandbar breaching has a substantial effect on the population at that locality.

Breaching is ongoing and likely to continue into the future to reduce upstream flooding when lagoons and estuaries are closed to the ocean. Other than permanent breaching, such as that at Bolsa Chica, these specific breaching activities and others do not happen every year, and the frequency at which they occur is dependent upon weather, tides, and other factors that we cannot predict very far into the future. Breaching occurs throughout the range of the species but is usually random, irregular, and sporadic. However, in response to climate change and sea level rise, we anticipate that sandbar breaching may occur more frequently in the future.

In terms of habitat loss and modification, our information indicates that despite advances in halting large-scale loss of wetland habitat that could support tidewater gobies, losses and alterations still occur and are expected to continue, but we cannot predict the number and locations of such projects in the future. Large projects have been replaced by multiple smaller projects, as demonstrated by the numerous biological opinions we have prepared for adverse effects to the tidewater goby since it was listed in 1994. Many of these projects are currently affecting tidewater goby habitat, and we expect more to occur in the future. We also know that hydrological changes to tidewater goby habitat have occurred and continue to occur, and that these changes are detrimental to tidewater goby persistence in some localities, and that sandbar breaching is a fairly widespread activity in the range of the tidewater goby. Some localities have experienced or are experiencing multiple threats; according to the recovery plan (Service 2005, Appendix E), more than 75 localities are likely subject to 2 or more kinds of habitat

degradation. Cumulatively, these activities are having a negative effect on tidewater goby habitat throughout its range, and other less common impacts, such as those resulting from agriculture, cattle grazing, and sewage treatment plant discharge, are also contributing to habitat loss and alteration.

While many sources of habitat loss or alteration are evident, compared to the large-scale habitat losses that occurred prior to the tidewater goby's listing, these are generally temporary and isolated or small in scale, so we do not anticipate severe impacts to the tidewater goby throughout its range in the short term. Where small and usually temporary effects occur, the tidewater goby has been able to persist (we do not have data on the size of populations following small projects, but the species reproduces profusely under proper conditions, and we expect it to rebound effectively). Over time, as these habitat alterations continue and other factors develop (such as climate change), we expect there may be a cumulative habitat loss that will result in loss of populations at some localities and that will reduce the range of the species. However, we conclude that the types of habitat alteration described above are not sufficient to currently cause rangewide declines in the tidewater goby's abundance or distribution.

Climate Change

In addition to the threats to tidewater goby habitat due to development, water quality, upstream flood control, and other alterations, the localities where tidewater gobies occur are threatened by global climate change. Sea level rise and hydrological changes associated with climate change are anticipated to have significant effects on tidewater goby habitat over the next several decades.

Sea level rise is a result of two phenomena: Thermal expansion (increased sea water temperatures) and global ice melt (Cayan *et al.* 2006, p. 5). Between 1897 and 2006, the observed sea level rise has been approximately 2 mm (0.08 in) per year, or a total of 20 cm (8 in) over that period (Heberger *et al.* 2009, p. 6). Older estimates projected that sea level rise along the California coast would follow a similar rate and reach 0.2–0.6 m (0.7–2 ft) by 2100 (IPCC 2007). More recent observations and models indicate that those projections were conservative and ignored some critical factors, such as melting of the Greenland and Antarctica ice sheets (Heberger *et al.* 2009, p. 6). Heberger *et al.* (2009, p. 8) have updated the sea level rise projections for California to 1.0–1.4 m (3.3–4.6 ft) by 2100, while Vermeer and Rahmstorf (2009, p. 21530) calculate the sea level rise globally at 0.57–1.9 m (2.4–6.2 ft); in both cases, recent estimates are more than twice earlier projections.

The effects of sea level rise could be compounded by and work synergistically with normal hydrological and meteorological phenomena along the California coast. The normal, but dramatic, tidal fluctuations that occur in California could be further increased with sea level rise. Storm severity is projected to increase with more frequent El Niño Southern Oscillations due to increasing surface water temperature (Cayan *et al.* 2006, p. 17). Storm severity is projected to increase to the north and decrease to the south, likely a consequence of the winter storm track shifting to the north (Cayan *et al.* 2009, p. 38). The combined effect of these phenomena could result in sea level rise reaching farther inland than previously anticipated in some models (Cayan *et al.* 2006, pp. 48–49; Cayan *et al.* 2009, p. 40).

Park *et al.* (1989, pp. 1–52) projected that of the saltmarshes along the coast of the contiguous United States, 30 percent would be lost with a 0.5-m (1.6-ft) sea level rise, 46 percent with a 1-m (3.3-ft) sea level rise, 52 percent with a 2-m (6.6-ft) sea level rise, and 65 percent with a 3-m (9.8-ft) sea level rise. While we cannot project directly to California from the estimates of Park *et al.* (1989, pp. 1–52), who focused on the east coast and Gulf coast of the United States, we can use it to make some estimates of what could happen along the West Coast. Assuming their estimates are accurate, we can anticipate that with a projected global sea level rise of up to almost 2 m (6.6 ft), approximately 52 percent of the remaining coastal saltmarshes in California could be inundated by 2100. Applying Heberger *et al.*'s (2009, p. 8) more conservative estimates for California to Park *et al.*'s calculations, with a projected sea level rise of 1.0–1.4 m (3.3–4.6 ft) by 2100, somewhere between 46 and 52 percent of the coastal saltmarshes in California would be inundated.

For the tidewater goby, these projections indicate that seal level rise has the potential to inundate coastal lagoons and transform them into primarily saltwater bodies (Cayan *et al.* 2006, pp. 34, 48–49). More severe storms that are likely to result from climate change (Cayan *et al.* 2006, p. 17), especially along the northern coast of California (Cayan *et al.* 2009, p. 38), combined with the higher than normal sea levels, will breach lagoon mouths more frequently from the ocean side. These breaches would increase the salinity within the tidewater goby's habitat. This would likely disrupt the tidewater goby's normal reproduction process, which requires closed lagoons and a specific range of salinities. The conversion of coastal lagoons and estuaries from brackish to primarily saltwater bodies, in addition to the inundation and breaching of sandbars, would eliminate habitat for tidewater gobies in many areas.

In addition to sea level rise, projections are that climate change will result in reduced freshwater flows into coastal lagoons and estuaries due to the following: (1) Decreased Sierra snowpack and more frequent droughts; (2) the need to extract more freshwater for human use (agriculture, growing populations) before it enters estuarine ecosystems; and (3) the likely intrusion of saltwater into California's single largest source of freshwater (the Sacramento-San Joaquin Delta) (Anderson *et al.* 2008, p. 4). Reduced freshwater supplies to coastal lagoons and estuaries, besides simulating the effects of drought on the tidewater goby, will exacerbate the intrusion of saltwater into coastal lagoons and estuaries that may result from sea level rise, thus converting lagoons and estuaries into primarily saltwater bodies that are not conducive to supporting tidewater gobies.

Although currently occupied localities may be inundated with saltwater due to sea level rise and declining freshwater input, currently freshwater habitats upstream of existing tidewater goby locations may become brackish as a result of sea level rise and develop habitat conditions suitable for the tidewater goby. In areas where this occurs, tidewater gobies may be able to move farther upstream as seawater moves farther inland. The ability of new habitat to develop and tidewater gobies to move upstream in response to saltwater intrusion is limited in many places by upstream modifications for flood control or other purposes (Service 2005, p. 17). In these locations, hard structures or development limit the extent of upstream habitat available that could potentially be converted to suitable brackish water areas suitable for gobies. These barriers are found throughout the range of the tidewater goby, and among regularly occupied tidewater goby localities, a few examples where upstream modifications may prevent migration include: Lagunitas Creek which has been subjected to channelization; the Santa Ynez River, which is channelized in portions and is diverted in some areas; Bennett Slough, which is channelized upstream, has been diverted, and for which flood control structures have

been installed; and the J Street Drain, which is concrete-lined and flows are controlled with a tide gate (Service 2005, Appendices C and E). As the sea level rises, the ability of tidewater gobies to move upstream to seek the habitat conditions they need may be impeded by these and other modifications. In addition, the lack of a natural interface between seawater and freshwater inflows may result in an abrupt change between saltwater and freshwater (instead of the mixing zone that exists under current conditions) and create unsuitable habitat for the tidewater goby.

The recovery plan (Service 2005, Appendix E) lists the localities currently and historically occupied by the tidewater goby and the threats to those localities. We assume that a shift upstream by tidewater gobies would be precluded at ''regularly'' and ''intermittently'' occupied localities where ''stream channelization'' is listed as a threat because the interface between saltwater and freshwater would not inundate areas where lagoons could form, but would be an abrupt interface where mixing of saltwater and freshwater occurs and does not allow tidewater goby habitat to establish. Similarly, those occupied localities for which ''salinity regime: dikes, levees, dams, etc.'' was listed as a threat could also form an abrupt fresh/saltwater interface where tidewater goby habitat could not form. Based on this assumption, we can calculate the number of localities where suitable tidewater goby habitat is not likely to form in response to sea level rise. Of the 124 localities considered ''regularly'' or ''intermittently'' occupied at the time the recovery plan was published (2005), 52 have ''stream channelization'' listed as a threat, 50 have ''salinity regime'' listed as a threat, and 26 localities have both listed as a threat. In total, 73 localities occupied by tidewater goby have either ''stream channelization'' or ''salinity regime'' or both listed as a threat. That would indicate that at least 59 percent (73 of 124) of the occupied localities that would be inundated by sea level rise may have little or no opportunity for suitable tidewater goby habitat to form upstream.

Another consideration is the human response to sea level rise. Existing development and infrastructure are at increasing risk, and those planning responses to sea level rise in California are exploring several options, including hard engineering, soft engineering, accommodation/adaptation, or retreat (California Coastal Commission 2001, pp. 18–25). While none of the responses have been ruled out, hard engineering (like sea walls or levees) and soft engineering (beach replenishment, sand bar protection) may be the most viable options (accommodation/adaptation could require costly structural fixes, and retreat requires the use of land that may not be available). Both of these engineering solutions are designed to work against sea level rise and will create an abrupt interface between saltwater and freshwater as opposed to allowing flooding of low-lying coastal areas. Consequently, areas where sea level rise is met by engineering solutions are less likely to accommodate a shift in tidewater goby habitat.

To summarize our analysis of the potential for upstream shifts in tidewater goby habitat in response to sea level rise, we estimate that up to 59 percent of the 124 localities considered regularly or intermittently occupied in the 2005 recovery plan (Service 2005, Appendix E) are not likely to accommodate higher sea levels such that ''new'' habitat for tidewater gobies would be created. Thus, we anticipate that by 2100, as much as 59 percent, and perhaps more, of the occupied localities could be extirpated by the combination of sea level rise with existing and future barriers to tidal inflow.

A less well-known aspect of climate change is ocean acidification. The increased amount of carbon dioxide in the atmosphere means rainfall captures more carbon dioxide and delivers it to the oceans. When carbon dioxide dissolves in seawater, the concentration of hydrogen ions increases, thereby increasing the acidity (Orr *et al.* 2005, p. 1). The lowering pH makes calcium carbonate less available for organisms that use it to form shells and exoskeletons. Projections are that ocean acidification, which began shortly after the Industrial Revolution and is accelerating in the 21st century, could disrupt the life cycles of many marine organisms that form the basis of complex ecosystems (Orr *et al.* 2005, p. 685). The tidewater goby forages on a variety of small organisms that may rely on the availability of calcium carbonate to form exoskeletons and shells. If ocean acidification decreases the availability of such prey, tidewater goby populations could be affected. While the effects of carbon dioxide dissolving in the oceans are apparent in some cases (coral reefs), the impacts to tidewater goby habitat and prey are speculative. Although acidification may have some effect on the species, at this time we cannot make meaningful projections on either the degree of acidification that is likely to occur within the range of the tidewater goby, or how the species may react to acidification.

Considering the number of historical localities listed as extirpated (24) in the recovery plan (Service 2005, p. 27), and those considered so small or degraded that long-term persistence is questionable (55 to 70; Service 2005, p. 6), the additional threat due to climate change and sea level rise increases the likelihood that the number of tidewater goby populations will decline and those that remain will be further fragmented.

Summary of Factor A

On the basis of this analysis, we find that the destruction, modification, or curtailment of tidewater goby habitat is currently a threat to the tidewater goby rangewide, and we expect the threat to continue in the future. While the large-scale impacts to tidewater goby habitat have slowed due to regulations that protect wetland areas, multiple small losses and alterations still occur and are expected to continue to degrade tidewater goby habitat throughout the species' range. Hydrological changes to tidewater goby habitat, such as flood control and bridge replacement, continue to occur, and these changes are detrimental to tidewater goby persistence in some localities. Sandbar breaching is a fairly pervasive activity throughout the range of the tidewater goby and has a significant negative impact on the populations where it occurs. Cumulatively, while these activities are having a negative effect on tidewater goby habitat throughout its range, and we predict that activities that remove or degrade tidewater goby habitat will continue, we conclude that impacts to the tidewater goby from these activities are not currently having a substantial effect on the species throughout its range, but may in the future as these effects accumulate.

A primary reason for the above conclusion is the tidewater goby's ability to rebound after prolonged periods of unsuitable habitat conditions (e.g., prolonged drought). At the time of listing in 1994, when the tidewater goby was known to occupy only 43 localities, we concluded that the species' ''downward trend was likely to continue'' due to threats posed by, among others, habitat loss. When the drought that had reduced the number of localities to 43 ended, the tidewater goby numbers rebounded to a now estimated 114 occupied localities (78 FR 8746). This indicates that the species is able to recover from a serious drought and that the threats we believed would cause a continuing downward trend are not as serious as previously determined.

In addition to the direct human-caused losses of tidewater goby habitat described above, climate change

(including ocean acidification), and sea level rise in particular, will have a significant negative impact on the species. Sea levels have been rising since the last century, and we can project how sea level rise will affect the tidewater goby; however, sea level rise is happening gradually and demonstrable effects to the tidewater goby will only be manifested after decades of global temperature increases. Thus, we conclude that sea level rise is a threat to the species in the foreseeable future, but is not an imminent threat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on our review of the available information, we found no evidence of risks from overutilization for commercial, recreational, scientific, or educational purposes affecting the tidewater goby or potential risks in the future. While some scientific collecting has been done for genetic analysis, the number of individual gobies removed has been kept to levels that would not have a noticeable impact on discrete populations. We therefore conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the tidewater goby now, and we do not anticipate overutilization becoming a threat in the future.

C. Disease or Predation

Disease/Parasites

Disease was not considered a threat to the tidewater goby in the final listing rule for the species; however, concern exists over the effects of certain parasites on the tidewater goby. *Cryptocotyle lingua* is one parasite that has been documented in the tidewater goby (Swift *et al.* 1989, p. 7; Swenson 1999). It is an introduced fluke (flatworm) native to the eastern Atlantic Ocean that infects marine fish as an intermediate host (Sindermann and Farrin 1962, pp. 69–75). The source of this parasite is not known, but it may have been introduced in ballast water from vessels from eastern Atlantic ports. As a trigenetic parasite, *Cryptocotyle lingua* has two intermediate hosts; the first is a snail, the second a fish like the tidewater goby. The second intermediate host passes along the parasite to the final host, such as a bird or mammal, when the fish is consumed. The intermediate host is weakened by the parasite but not killed. Although all localities may potentially support this parasite, it has only been documented to infect tidewater gobies at Gannon Slough, Humboldt County, Pescadero Creek, San Mateo County, and possibly Corcoran Lagoon, Santa Cruz County (Swenson 1999). While a typical trigenetic parasite has effects on its intermediate hosts described above, we have no information indicating that *Cryptocotyle lingua* infestations of the tidewater goby are substantial enough to cause the loss of populations or have caused a decline in the species' distribution or numbers. In the future, if *Cryptocotyle lingua* spreads, it may have a greater effect on the tidewater goby than currently observed.

McGourty *et al.* (2007, pp. 655–660) report that a newly recognized species of protozoan parasite, *Kabatana newberryi,* may be specific to the tidewater goby. Their data suggest that *Kabatana newberryi* occurs sympatrically (overlaps geographically) with the tidewater goby throughout northern California. During presence-absence surveys of tidewater gobies in 2003 and 2004, McGourty *et al.* (2007, p. 655) found individuals throughout the northern range of the species infected with *Kabatana newberryi,* as shown by the presence of opaque white muscle tissue. Voucher specimens of tidewater gobies taken from Rodeo Lagoon, Marin County, California in 2005 exhibited similar infections (D. Fong, pers. comm. as cited in McGourty *et al.* 2007, p. 659). No specific identification of the parasites could be made because the voucher specimens were preserved in formalin; however, the parasite from the Rodeo Lagoon specimens appears very similar to *Kabatana newberryi* in that it infects muscle cells. *Kabatana newberryi* has not been reported in the southern portion of the tidewater goby's range, and the dispersal mechanism of *Kabatana newberryi* is not well understood (McGourty *et al.* 2007, pp. 659–670). Surveys evaluating the presence and potential effects of *Kabatana newberryi* on tidewater gobies are needed to assess whether this parasite represents a significant threat to its host and could contribute to its decline. Because this parasite was discovered in tidewater goby specimens captured in Big Lagoon, Humboldt County, an otherwise large and reasonably secure population, this suggests that even populations at otherwise low risk from habitat loss or destruction may be at risk from disease or parasites (Service 2007, p. 24).

Although parasites have been found in tidewater gobies, diseases and parasites and how they affect tidewater goby populations are not well understood at this time. Only recently has research begun to analyze the relationship between tidewater gobies and parasites, and how the tidewater goby populations are affected. Native parasites, such as *Kabatana newberryi,* that target a specific host (in this case, the tidewater goby) are probably not a threat because a successful monospecific parasite does not decimate its host populations, although it can affect individual animals. Nonnative parasites, such as *Cryptocotyle lingua,* may be more of a threat because they did not evolve a host-parasite relationship with the tidewater goby, they can occupy more than one host species, and an infestation could possibly reduce tidewater goby numbers.

Although parasites can have effects on individual tidewater gobies, we have no information attributing any population declines or loss of localities to parasitic infestations. The best available information does not indicate that these parasites pose a significant threat to the tidewater goby now. We have no data with which to predict the future impacts of parasites on the tidewater goby, but the potential exists for parasites to reduce tidewater goby numbers if the parasites spread or increase in number.

Predation

Native fish species, such as some salmonids, may prey on tidewater gobies (Moyle 2002, p. 432). This is a natural phenomenon, and we expect gobies to be adapted to some level of predation by native species with which they have evolved, but when tidewater goby numbers and habitat are reduced through human-induced threats, these native predators may have a greater effect on a tidewater goby population. Introduced aquatic species that may have arrived in ballast water from foreign vessels or been deliberately released may be more damaging because they did not evolve in conjunction with native species, and they can be prolific in the absence of their own natural controls (that is, disease or predators). We know that introduced predatory fish have a negative impact on most of California's native coastal species and some prey on tidewater gobies (Service 2007, p. 21). According to the recovery plan, approximately 65 localities are known to have native and nonnative predators that feed on tidewater gobies (Service 2005, Appendix E). Introduced species may affect tidewater goby populations by preying on adults, larvae, or eggs. Predation by introduced or native species can be particularly damaging to species, such as tidewater goby, that are generally distributed across small, isolated populations and are prone to fluctuations in population

size (Pimm *et al.* 1988, p. 777; Lafferty *et al.* 1999a, p. 1448).

Specific examples of situations where predation by nonnative species may have negatively affected tidewater goby populations can be found in M. Capelli, *in litt.* 1999, p. 13; D. Holland, *in litt.* 1999, pp. 5–6; and C. Swift, *in litt.* 1999, no pagination. In the Santa Ynez River system, tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile largemouth bass sampled (Swift *et al.* 1997; M. Capelli, *in litt.* 1999, p. 13). The decline and subsequent recovery of the tidewater goby population in Las Pulgas Creek closely tracked the presence and absence of green sunfish in the lagoon of this system (Swift and Holland 1998, p. 10). The elimination of tidewater gobies from the Santa Margarita River, San Diego County, may have been due to the combined influence of nonnative species and decreasing habitat available for the tidewater goby (Swift and Holland 1998, pp. 14–17). Largemouth bass in Old Creek of San Luis Obispo County are likely responsible for the elimination and prevention of re-establishment of tidewater gobies there (D. Holland, *in litt.* 1999, p. 6). This evidence, though indirect, suggests that some nonnative predators can have significant negative impacts on tidewater gobies, up to and including extirpation from individual localities (K. Lafferty, *in litt.* 1999). In addition, predation by nonnatives may have negative effects short of extirpation, reducing tidewater goby population sizes and thereby rendering populations more vulnerable over the long term to extirpation as a result of natural perturbations of habitat conditions at the site (M. Capelli, *in litt.* 1999, p. 11).

Fish surveys along the California coast conducted by the California Department of Fish and Wildlife's (CDFW) Office of Spill Prevention and Response identified the presence of numerous introduced predatory species, including striped bass (*Morone saxatilis*), white catfish (*Amerius catus*), largemouth bass (*Micropterus salmoides*), common carp (*Cyprinus carpio*), threadfin shad (*Dorosoma petenense*), redear sunfish (*Lepomis microlophus*), black crappie (*Pomoxis nigromaculatus*), bluegill (*Lepomis macrochirus*), and inland silverside (*Menidia beryllina*). These fish have been introduced historically in California waters as sport fish or forage.

Currently, the impact of nonnative fish appears to be isolated and infrequent (see examples above); however, if introductions of nonnative fish continue in the future and more waters that support tidewater gobies are affected, we can expect nonnative predators to have a more widespread negative impact on tidewater goby populations.

Amphibians are also known predators of native fish species (Swift and Holland 1998, p. 26). Bullfrogs (*Rana catesbeiana*) have been introduced to California either accidentally through the aquarium trade and during trout stocking, or deliberately for pest control or sport. Bullfrogs are known predators on a wide variety of species, including many fish, and are suspected to have significant negative impacts on tidewater goby populations (Swift and Holland 1998, p. 26; Holland *et al.* 2001, pp. 35–36). Furthermore, bullfrogs have been implicated in the demise of the Old Creek, San Luis Obispo County, tidewater goby population (Rathbun 1991, p. 4).

In summary, numerous native and nonnative predators have been documented in tidewater goby habitat. While there is evidence that predators can affect individual tidewater goby localities, the impacts do not appear to be widespread and are more acute where predation is occurring in the presence of other factors that have depressed the species' numbers, such as drought. We conclude predation alone is not a severe threat to the species as a whole. As discussed under Factor D below, subsequent to the listing of the species, the State of California has enacted regulations to help control aquatic invasive species, including those that may arrive in ballast water, and this may reduce the threat from nonnative predators.

Summary of Factor C

The best available information indicates that at current population levels, parasitic infections and nonnative predators are not a major threat to the tidewater goby rangewide; however, under certain conditions (for example, poor water quality, drought), parasites and nonnative predators could have substantial negative impacts to populations of tidewater goby at specific localities in the future. At the time of listing in 1994, when the tidewater goby occupied only 43 localities and a severe drought was ending, parasites and predators posed a relatively greater threat to species. After the drought ended, the number of localities known to be occupied by tidewater gobies has increased to an estimated 114 (78 FR 8746), and currently available information does not indicate that parasites and predators are having a substantial effect on the tidewater goby's numbers or distribution at current levels.

D. The Inadequacy of Existing Regulatory Mechanisms

Reclassifying the tidewater goby from endangered to threatened would not change the protections afforded to this species under the Act or other regulations. The listing rule for the tidewater goby described several Federal and State regulations that provide protection for the tidewater goby and its habitat including the Rivers and Harbors Act (33 U.S.C. 401 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and the California Coastal Act (see the final listing rule for details on these and other regulations (59 FR 5494)). These regulations all remain in effect and continue to provide substantial protections for the tidewater goby and its habitat. However, while regulations have largely eliminated the large-scale destruction of habitat, these same regulations contain permitting processes that allow certain actions to continue, and small-scale habitat loss or degradation (meaning roughly a few acres per project) continues to occur (California Coastal Commission 1994, no pagination).

Subsequent to the listing of the tidewater goby as endangered, three new regulations have been enacted that provide additional protection for the species, the Federal Sikes Act Improvement Act, the California Ballast Management for Control of Nonindigenous Species Act, and the California Marine Invasive Species Act.

The Sikes Act Improvement Act of 1997 (16 U.S.C. 670 *et seq.*) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act requires Department of Defense installations to prepare integrated natural resources management plans (INRMPs) that manage natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. INRMPs incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. INRMPs are developed in coordination with the State and the Service, and are generally updated every 5 years although they remain in effect during that process. Although implementation is subject to funding availability, INRMPs are important guiding documents that help to integrate natural resource conservation with military readiness

and training. Each INRMP includes the following:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

Vandenberg Air Force Base (VAFB) is located on the central California coast, approximately 225 km (140 mi) northwest of Los Angeles and is approximately 67 km (42 mi) in length. VAFB completed an INRMP in 2011 that protects in several ways the five localities on the base occupied by the tidewater goby. These measures include: (1) Avoiding the tidewater goby and its habitat, whenever possible, in project planning; (2) scheduling activities that may affect tidewater goby outside of the peak breeding period (March to July); (3) coordinating with VAFB water quality staff to prevent degradation and contamination of aquatic habitats; and (4) prohibiting the introduction of nonnative fishes into streams on-base (VAFB 2011, Tab D, p. 15). Furthermore, VAFB's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the tidewater goby and its habitat. In addition, VAFB's INRMP protects aquatic habitats for the tidewater goby by excluding cattle from wetlands and riparian areas through the installation and maintenance of fencing.

Seven of the eight occupied localities remaining in southern California are on MCB Camp Pendleton, which is located on the southern coast of California approximately 132 km (82 mi) south of Los Angeles and is approximately 21 km (13 mi) in length. MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007, which includes several measures that protect the tidewater goby and its habitat.

Management and protection measures that benefit the tidewater goby identified in Appendix B of the INRMP (MCB Camp Pendleton 2007, Appendix B, pp. B5–B7) include, but are not limited to, the following: (1) Maintaining connectivity of beach and estuarine ecosystems with riparian and upland ecosystems; (2) promoting natural hydrological processes to maintain estuarine water quality and quantity; and (3) maximizing the probability of tidewater goby metapopulation existence within the lagoon complex. Management and protection measures that benefit tidewater goby identified in Appendix C of the INRMP (MCB Camp Pendleton 2007, Appendix C, pp. C5–C8) include, but are not limited to, the following: (1) Eliminating nonnative, invasive species (such as *Arundo donax* (giant reed)) on the installation and off the installation in partnership with upstream landowners to enhance ecosystem value; (2) providing viable riparian corridors and promoting connectivity of native riparian habitats; (3) providing for unimpeded hydrologic and sedimentary floodplain dynamics to support the maintenance and enhancement of biota; (4) maintaining natural floodplain processes and extent of these areas by avoiding and minimizing further permanent loss of floodplain habitats; (5) maintaining to the maximum extent possible natural flood regimes; (6) maintaining to the extent practicable stream and river flows needed to support riparian habitat; (7) monitoring and maintaining groundwater levels and basin withdrawals to avoid loss and degradation of habitat quality; (8) restoring areas to their original condition after disturbance, such as following project construction or fire damage; and (9) promoting increased tidewater goby populations in watersheds through perpetuation of natural ecosystem processes and programmatic instruction application for avoidance and minimization of impacts.

MCB Camp Pendleton's INRMP also benefits tidewater goby through ongoing monitoring and research efforts. The installation conducts monitoring of tidewater goby populations at least once every 3 years (MCB Camp Pendleton 2007, Appendix B, p. B8). Additionally, MCB Camp Pendleton collaborated with the U.S. Geological Survey's Biological Resources Division to develop and implement a rigorous, science-based monitoring protocol for tidewater goby populations throughout the installation, including monitoring water quality variables at all historically occupied sites regardless of current occupation status.

The completion of the MCB Camp Pendleton INRMP and the protections it affords to the tidewater goby and its habitat on the base is of particular significance to the status of the species as seven of the eight occupied localities remaining in southern California (south of Los Angeles County) are on MCB Camp Pendleton. As recently as 1999, the Service considered southern California to be the most seriously threatened portion of the tidewater goby's range (64 FR 33816). However, the MCB Camp Pendleton INRMP has substantially reduced threats in the region.

The California Ballast Management for Control of Nonindigenous Species Act of 1999 was adopted by the State of California to establish a multi-agency program to prevent the introduction and spread of nonnative aquatic species from the ballast of ships into the State waters of California. The program was designed to determine the current level of species invasions while researching alternative control strategies. Under this program, the CDFW is required to study the extent of nonnative species introductions into the coastal waters of the State. To fulfill this requirement, the CDFW's Office of Spill Prevention and Response initiated several baseline field surveys of ports and bays along the California coast and a literature survey of records of nonindigenous species.

The California Marine Invasive Species Act was passed in 2003, widening the scope of the original ballast water program (CDFG 2008, p. 47). The 2003 act requires ballast water management for all vessels that intend to discharge ballast water in California waters. All qualifying vessels coming from ports within the Pacific Coast region must conduct an exchange [in waters at least 50 nautical mi offshore and 200 m (656 ft) deep], or retain all ballast water and associated sediments. To determine the effectiveness of the management provisions of this act, the legislation also requires State agencies to conduct a series of biological surveys to monitor new introductions to coastal and estuarine waters. Implementation of these measures should further reduce the frequency of new introductions of invasive species into California's coastal waters that could be a threat to the tidewater goby. The Coastal Ecosystems Protection Act of 2006 deleted a sunset provision of the Marine Invasive Species Act, making the program permanent.

Upon its listing as endangered, the tidewater goby benefited from the protections of Act, which include the prohibition against take and the requirement for interagency consultation for Federal actions that may affect the species. Section 9 of the

Act and Federal regulations prohibit the take of endangered and threatened species without special exemption. The Act defines ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Our regulations define ''harm'' to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Our regulations also define ''harass'' as intentional or negligent actions that create the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. Section 6 of the Act, which authorizes us to enter into cooperative conservation agreements with States, and to allocate funds for conservation programs to benefit threatened or endangered species, provides another potential benefit. Neither section 6 of the Act nor Service policy gives higher priority to endangered species over threatened species for conservation funding.

Thus, listing the tidewater goby provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. Because the Service has regulations that prohibit take of all threatened wildlife species (50 CFR 17.31(a)), unless modified by a special rule issued under section 4(d) of the Act (50 CFR 17.31(c)), the regulatory protections of the Act are largely the same for wildlife species listed as endangered and as threatened; thus, the protections provided by the Act will remain in place if the tidewater goby is reclassified as a threatened species.

Summary of Factor D

In summary, the tidewater goby is currently protected by a variety of regulatory mechanisms throughout its range, and we anticipate those protections will continue for the foreseeable future. Regulations in place when the tidewater goby was listed continue to provide substantial protection for the species and its habitat. The passing of the Sikes Act Improvement Act subsequent to the listing has been particularly beneficial to the tidewater goby in southern California where seven of the eight occupied locations in that region receive a substantial level of protection through the INRMP developed by MCB Camp Pendleton. Although the INRMP developed by VAFB provides substantial protections to the tidewater goby and its habitat, the VAFB INRMP only covers the five localities on the base. The other two regulations passed since the species was listed, the California Ballast Management for Control of Nonindigenous Species Act and the California Marine Invasive Species Act, help reduce the threat of the introduction of new invasive species from ballast water throughout the entire range of the species. Overall, regulations in effect at the time of listing and new regulations passed subsequent to listing have substantially reduced, but have not eliminated any of, the threats to the tidewater goby and its habitat. Therefore, we conclude that existing regulatory mechanisms are inadequate to protect the tidewater goby without the additional protections afforded under the Act.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Competition

One of the potential threats to the tidewater goby is competition from nonnative species. This competition is mainly for prey, but can also be competition for other resources. For example, Big Lagoon and Freshwater Lagoon in Humboldt County support populations of the nonnative New Zealand mudsnail (*Potamopyrgus antipodarum*) that was likely introduced by fisherman or boats, either on the outside of the vessels or in ballast water (Service 2008, no pagination). The New Zealand mudsnail blankets the bottom of these lagoons and may outcompete other native species, including the tidewater goby, for space and resources. The New Zealand mudsnail may have the overall effect of altering the ecosystem to the point it cannot support other native species.

Several small, potentially competitive, estuarine fishes have also been introduced into tidewater goby habitat. These include the rainwater killifish (*Lucania parva*), chameleon goby (*Tridentiger trigonocephalus*), yellowfin goby (*Acanthogobius flavimanus*), and shimofuri goby (*Tridentiger bifasciatus*). The first three species appeared in the 1960s in San Francisco Bay, coincident with the last collections of tidewater gobies there (Haaker 1979; Swift *et al.* 1989). Rainwater killifish have become widespread in San Francisco Bay, and have recently become established in Upper Newport Bay, Orange County, but have not become established elsewhere (Moyle 2002, p. 315). Yellowfin gobies have seldom been collected in the smaller, brackish, non-tidal systems where tidewater gobies are found (Swift *et al.* 1994, p. 21); however, in 1992 and 1993, yellowfin gobies were collected in the Santa Clara River (Ventura County) and Santa Margarita River (San Diego County) lagoons (Swift *et al.* 1994, p. 15). The recent appearance of yellowfin gobies in southern California and the coincident disappearance of the tidewater goby in the Santa Margarita River in late 1993 suggest that the species is slowly spreading to brackish habitats and may be eliminating tidewater gobies.

Chameleon gobies have been locally abundant on hard substrates in San Francisco and Los Angeles harbors since the 1960s and 1970s, respectively (Haaker 1979, p. 59). Initial experiments by Swenson and Matern (1995, p. 3) indicated that shimofuri gobies aggressively intimidate, outcompete, and prey on tidewater gobies in the laboratory. However, like the chameleon goby, the shimofuri goby prefers hard substrates. Thus, it might be expected to remain in such habitats in coastal lagoons, and perhaps not interact extensively with tidewater gobies. To date, the possible effects of interactions in the wild between these nonnative estuarine fish and tidewater gobies are largely conjectural.

These nonnative competitors may be having a negative effect on tidewater goby numbers, but the relationship is not demonstrated by the best available information. We can infer from the overall impact of introducing nonnative competitors in other situations that nonnative species like the New Zealand mussel will deplete resources used by the tidewater goby, but based on the best available information, we conclude that competition is not a substantial, uniform threat to the species throughout its range. As discussed under Factor D above, the State of California has enacted regulations to help control aquatic invasive species (CDFG 2008), including those introduced in ballast water, and while these regulations may not eliminate competition from nonnative species, they should help reduce the future threat.

Water Quality

Impaired water quality was cited as a potential threat to the tidewater goby in the recovery plan (Service 2005, p. 21, 28, Appendix C). Water quality issues still affect some of the localities occupied by tidewater gobies. For example, the Tillas Slough in Del Norte County is subject to runoff from pastures that carry nitrogenous waste, which in turn increases algae production and depletes oxygen levels in the water. In the Santa Clara River estuary, the natural flows are augmented by discharges from a wastewater treatment plant that have degraded water quality. These impacts on the tidewater goby habitat are not uncommon and appear ongoing and are likely to continue into the future in many parts of its range.

At the time the recovery plan was published (Service 2005), we determined that 54 localities that currently or historically supported, or could potentially support, tidewater gobies were ''Water Quality Limited'' as defined by the State Water Resources Control Board's 2002 Clean Water Act Section 303(d) List of Water Quality Limited Segments. The designation indicates that the listed water bodies do not meet current water quality standards set by the U.S. Environmental Protection Agency. Contaminants may include everything from sediment to coliform bacteria to polychlorinated biphenyls (PCBs).

Although the 2010 303(d) list includes an additional 30 localities listed in the recovery plan (Service 2005, Appendix C) that currently or historically supported, or could potentially support, tidewater gobies and are now considered ''Water Quality Limited'' (for a total of 84 localities), no link has been established between impaired water quality and negative impacts on tidewater goby populations (Service 2005, pp. 47, 50, 52). Therefore, based on the best available information, we conclude that impaired water quality is not a substantial threat to the tidewater goby. The recovery plan cites the need to explore water quality issues to ascertain the level of threat posed in these ''Water Quality Limited'' segments. This need may become more critical as more localities that support the species are added to the 303(d) list. (Note: Some additions to the list may be due to changes in the criteria for meeting the ''Water Quality Limited'' standards and not solely to declining water quality.)

Habitat Fragmentation

Metapopulation dynamics are an important aspect of tidewater goby biology and, in turn, the species' conservation. Maintaining metapopulation relationships ensures that processes of extirpation and recolonization, genetic exchange leading to enhanced fitness, and connectivity between populations are preserved. Studies such as Lafferty *et al.* (1999a, 1999b) and recovery planning efforts (Service 2005) emphasize the need to understand metapopulation dynamics for conserving the tidewater goby.

Tidewater goby metapopulation structures that may have existed in the past have been altered by the creation of additional gaps and increases in the number and size of gaps in the species' distribution (Smith, *in litt.* 2007) as a result of habitat alteration and other factors that have rendered some localities unsuitable for tidewater gobies. Connectivity of many populations has been reduced or eliminated by loss of localities, increased distance between localities, and lack of suitable, intermediate habitats (''stepping stones''). For example: (1) Waddell Creek in Santa Cruz County has been lost as a possible 24-km (15-mi) stepping stone between those localities to the north in San Mateo County and those to the south (for example, Scott Creek); (2) Schwans and Woods Lagoons have been lost as suitable stepping stones between the Baldwin/Wilder metapopulation north of the Santa Cruz and Corcoran/Moran metapopulation south of Santa Cruz; and (3) San Vicente and Liddell Creeks have been lost between Scott and Laguna Creeks (Santa Cruz County) (Smith, *in litt.* 2007).

In central and northern California, Swift (*in litt.* 2007) believes it very unlikely that genetic interchange (sharing of genes among populations that may allow for exchange of beneficial mutations that enhance survival under changing conditions, usually through dispersal of breeding individuals) is possible between several groups of populations naturally separated by 32 km (20 mi) or more of rugged coastline. For example, isolated populations in Mendocino County in the Ten Mile River-Virgin Creek-Pudding Creek group are unlikely to receive dispersing tidewater gobies and their genetic material from either the north or the south. These populations are too far away from other populations to be recolonized if lost and are unlikely to contribute genetic material in either direction as well. Farther south, a wide gap exists between Gaviota Creek and Winchester/Bell Canyon in Santa Barbara County (Swift, *in litt.* 2007). Similar long distances exist between Winchester/Bell Canyon and Arroyo Burro and Mission Creek-Laguna Channel (in Santa Barbara County) and between these latter two and the Ventura River and Santa Clara River pair (Ventura County). These large gaps seem to disrupt the metapopulations along most of the coast from Point Conception to Rincon Point (Swift, *in litt.* 2007), leaving individual populations vulnerable to loss of both the recolonization potential and the benefits of genetic interchange.

The substantial destruction of coastal wetlands, lagoons, and estuaries in the past has also contributed to many tidewater goby localities becoming more isolated, thus threatening the stability of some metapopulations through the potential loss of recolonization opportunities and the benefits of genetic interchange. An example of where this has occurred is the San Francisco Bay area. We have no means to determine how many tidewater goby localities existed in this area prior to development, but we do know that approximately 95 percent of the wetlands in this area have been filled (Josselyn 1983). Available records indicate at least seven tidewater goby localities have been extirpated, and there are now no occupied localities within the San Francisco Bay (see Figure 1, above). Lagunitas Creek is the only remaining occupied locality within Tomales Bay in Marin County, and is now separated from its nearest neighbor to the north, Estero de San Antonio, by a distance of about 25 km (15.5 mi), and from its nearest neighbor to the south, Rodeo Lagoon, by a distance of 38 km (23.6 mi). If tidewater gobies at Lagunitas Creek were extirpated during a drought, it is unlikely that the location would be recolonized naturally. The Rodeo Lagoon locality is also isolated. The closest known existing localities of tidewater goby to Rodeo Lagoon are Lagunitas Creek in Tomales Bay, 38 km (23.6 mi) to the north, and San Gregorio Creek, 58 km (36 mi) to the south. If the population at Rodeo Lagoon were extirpated, the tidewater goby would disappear from about a 70-km (60-mi) portion of the coast.

Another complicating factor that may be important to recolonization is the direction of long-shore currents. These currents flow predominantly from north to south. Because tidewater gobies are considered to be weak swimmers, recolonization may be limited to extirpated localities to the south of occupied ones.

While the metapopulation structure of tidewater gobies has been disrupted to some extent by an increase in the number and size of gaps between localities, we are aware that some areas where tidewater gobies have been extirpated apparently have been recolonized when extant populations were present within a relatively short distance of the extirpated population. For example, Lafferty *et al.* (1999b, p. 621) concluded that tidewater gobies had recolonized Cañada Honda Creek in Santa Barbara County from the Santa Ynez River approximately 9 km (5.5 mi) to the north. Recolonization may be occurring when high freshwater flows into lagoons and estuaries cause the entrance to the system to be breached and connect directly to the ocean. Additionally, as discussed above, the number of tidewater goby localities has increased from 43 at the time of listing to an estimated 114 localities occupied currently (78 FR 8746), indicating that the species has been able to recolonize many localities that had become extirpated during the extended drought that occurred immediately prior to the species' listing. Local extirpations and recolonizations are a natural part of tidewater goby metapopulation dynamics. We expect some local extirpations as part of this natural dynamic. However, because of increasing fragmentation, we expect that some populations will be extirpated over the long term and will not be recolonized. We cannot predict with certainty which populations may become permanently extirpated and which will eventually be recolonized, but we expect any permanent loss of populations to be gradual.

When metapopulations are fragmented and isolated from each other, genetic exchange within and between them is correspondingly limited, which may result in increased genetic drift (random changes in gene frequencies within populations resulting because each generation contains only a subset, or sample, of all the genes present in the previous generation) and inbreeding (mating between close relatives). Genetic drift can result in loss of alleles (gene variants), particularly those that occur in low frequencies within populations, and can contribute to loss of genetic diversity within and among populations. Loss of genetic diversity in small populations may decrease the potential for persistence in the face of long-term environmental change (Shaffer 1981, p. 133). Loss of genetic diversity can also result in decline in fitness from expression of deleterious recessive alleles (Meffe and Carroll 1994, pp. 150–152). Change in the distribution of diversity can destroy local adaptations or break up coadapted gene complexes (outbreeding depression). These problems can lead to a poorer ''match'' of the organism to its environment, reducing individual fitness and increasing the probability of population or species extinction (Meffe and Carroll 1994, p. 131). Genetic drift and inbreeding are reduced when there is genetic exchange among populations, which can restore genes lost through drift or bring in new genes, while also increasing the likelihood of matings between unrelated individuals.

As discussed above in the ''Genetics'' section, tidewater goby populations currently exhibit population genetic structuring (groups of populations are genetically more similar to each other than to other populations). This indicates that some degree of isolation/genetic differentiation is probably normal for tidewater gobies and is the result of the evolutionary history of the species. Under this situation, we expect greater gene flow within major phylogeographic groups (groups of closely related populations) than between the groups. However, habitat loss and anthropogenic factors have resulted in the creation of additional gaps in the species' distribution. This fragmentation may be resulting in isolation not only among major groups of related populations, but also between populations within groups, and thus reducing the levels of normally expected gene flow. For the tidewater goby, where metapopulation dynamics dictate gene flow and genetic diversity, the observed fragmentation of some parts of the species' distribution indicate that some subpopulations are likely genetically isolated from others. The effects of this genetic isolation are exhibited by the results of genetics studies cited earlier that conclude that natural and anthropogenic barriers have contributed to genetic differentiation among populations. The implications for the survival of the tidewater goby are not clear, but the loss of genetic interchange between populations may cause increased inbreeding and the loss of fitness afforded a species by having a diverse genetic makeup. While we expect that increased fragmentation and isolation may adversely affect gene flow and eventually lead to reduced fitness of populations, these processes generally occur over many generations.

Stochastic Events

Stochastic events in ecology are random, usually natural occurrences, which can affect a species or its ecosystem. Such events may include wildfire, earthquakes, landslides, and climatic phenomena such as floods or drought. These events can have a substantial impact on a species at any level, from individuals to rangewide. Of particular concern for the tidewater goby are the stochastic events related to climate, including drought and flood.

The most significant natural factor adversely affecting the tidewater goby is drought and the resultant alteration of coastal and riparian habitats. Periodic droughts are a historical feature of California, which has been repeatedly subject to prolonged droughts (U.S. Geological Survey 2004). When the tidewater goby was proposed for listing as endangered in 1992 (57 FR 58770; December 11, 1992), California had just experienced what is considered the most severe drought in the history of the State; the drought lasted for 5 years from 1987 to 1992 (Priest *et al.* 1993, p. 1). Although some localities may have actually been occupied but at such low numbers as to be undetectable, at the time of listing in 1994, we concluded that all but 43 tidewater goby localities had been extirpated. During such periods, when the number of localities is severely reduced or the size of populations declines drastically, the risk of extinction increases.

Drought conditions, when combined with human-induced water reductions (diversions of water from streams, excessive groundwater withdrawals), have degraded coastal and riparian ecosystems and have created extremely stressful conditions for most aquatic species, including the tidewater goby. Drought can have dramatic negative effects on tidewater gobies, at times decreasing their populations to very low levels (perhaps to the point where they are undetectable) and at the extreme, extirpating populations. For example, we state in the final listing rule for the tidewater goby (59 FR 5494; February 4, 1994) that formerly large populations of tidewater gobies had declined in numbers because of the reduced availability of suitable lagoon habitats (San Simeon Creek and Pico Creek in San Luis Obispo County), while others disappeared when the lagoons dried (as seen at Santa Rosa Creek, San Luis Obispo County).

Despite the tidewater goby's negative response to the extreme drought of 1987–1992, when normal rainfall patterns returned, the species either recolonized localities that had been dry or numbers increased in localities where drought conditions had reduced numbers to an undetectable level. When the species was listed in 1994, this level of resiliency was not well-documented.

By the time we conducted our 5-year review of the species' status (Service 2007), the overall tidewater goby population numbers had continued to rise, and we concluded that the tidewater goby was much more resilient than previously believed, thus leading us to conclude that the species may not be at risk of imminent extinction.

Flooding following severe storm events can wash tidewater gobies out of an estuary, which may play an important role in recolonizing localities where the species has been extirpated (Lafferty *et al.* 1999a, p. 1448). The mixing of freshwater from a flood and the saltwater offshore, and the resulting reduction in salinity, may allow tidewater gobies to make limited alongshore migrations to other suitable habitat. Evidence indicates that this is part of the mechanism that has allowed the species to recover its numbers following the 1987–1992 drought in California. Conversely, the potential positive effects of flooding may be negated when channelization has occurred upstream and alters the flood dynamics of the system. In these cases, channelization can increase the duration and intensity of flood events, not only contributing to loss of tidewater gobies from the estuary, but also reducing the likelihood of recolonization because the high volume flows of water may prevent tidewater gobies from entering an estuary they might otherwise be able to colonize.

Stochastic events may have both positive and negative effects on the tidewater goby. Drought has been shown to have substantial negative effects on the species by drying up estuaries and reducing the population size at individual localities. In a positive sense, periodic flooding may promote dispersal and colonization between estuaries that are otherwise separated by beaches or bluffs by allowing tidewater gobies to move along the coast when salinity would otherwise be too high under non-flood conditions. Under certain situations, flooding may also have a negative effect on the tidewater goby; when upstream modifications for flood control alter the intensity of outflow through an estuary, tidewater gobies may be flushed into the ocean and prevented from returning when flows are too strong for them to navigate. As discussed under the section on climate change, we expect the freshwater flows into coastal estuaries to decrease over time as droughts become more frequent or severe. This combination of factors could have a substantial negative impact on tidewater goby habitat in the foreseeable future.

Summary of Factor E

For Factor E, we conclude that some aspects of the threats due to other natural or manmade factors are currently having a negative effect on the tidewater goby, while others may be acting on the species but the effects do not appear to be significant. For example, competition for resources is always a concern for wildlife, and we know competition from nonnative species has operated negatively on some populations and may have resulted in the extirpation of one tidewater goby locality; however, the best available scientific and commercial information does not indicate that competition is significantly impacting the tidewater goby at current population levels, and we consider competition to be a minor threat to the species as a whole. We also note that water quality was poor in many localities occupied by the tidewater goby in 2005, and that even more of its localities may have experienced declining water quality since then; however, the best available information has not established a link between water quality and an impact on tidewater goby populations.

In contrast, habitat fragmentation has been shown to be a concern both for wildlife in general and especially for a species like the tidewater goby that exists as metapopulations for which connectivity may be critical for their persistence and for the maintenance of genetic diversity that imparts fitness in the face of environmental change. Stochastic events like periodic drought are of special concern because we have observed the number of occupied localities drop to as low as 43 at the height of a prolonged drought. This means that any time we enter a period of drought, tidewater goby numbers are likely to drop; however, we have also seen that the tidewater goby populations are resilient in the face of such events and population numbers can rebound when climatic conditions change. We conclude that the threat due to habitat fragmentation persists throughout the species' range, and that the effects of stochastic events may be severe, such as may occur during the next drought, similar to the drought of the late 1980s and early 1990s. The tidewater goby has shown its ability to recover from the effects of drought once rainfall returns, but the effects of the other natural or manmade factors (such as fragmentation) may persist.

Cumulative Impacts

As noted in the sections above, some of the threats to the tidewater goby may be exacerbated under certain conditions where the individual threats may not otherwise be severe. While any likely combination of threats will have an additive effect on the species in a particular location, any of the threats combined with drought would appear to pose the greatest risk to the tidewater goby. As observed when the tidewater goby was listed as endangered in 1994 after several years of drought in California, the species declined to the point where the Service believed it faced extinction. A drought of the magnitude that lead to the species' listing could have the same impact, but even short periods of drought may have a substantial effect on individual populations if other threats are in place.

For example, we recognize that predation by nonnative species is likely not a major factor in the tidewater goby's status overall, although it may be important in some localities (Service 2007, p. 22). However, because predation may depress population numbers in some areas, another factor, such as drought, may have a greater effect because the population is already reduced or stressed by the presence of predators. We can conclude that such a locality is more likely to lose its tidewater goby population during a drought than one where predation is not an additional stressor.

A more dramatic cumulative effect resulting from drought may be due to upstream diversion or withdrawal of water from drainages. Where water may already be limited due to upstream uses before it can reach tidewater goby habitat and create the brackish conditions the species requires, even a small period of drought is likely to cause the species' habitat to dry up; this is especially of concern at smaller watersheds. If the drought is extended, the return of tidewater gobies to that locality would be dependent on proper functioning of the metapopulation dynamics that allow recolonization from adjacent refugia, as we conclude happened at the end of the drought in the late 1980s and early 1990s in California.

This same principle applies to those localities where threats such as water pollution, upstream barriers, and disease or parasites may be a limiting factor in the tidewater goby's numbers. Because adequate water supply is critical to the species' life cycle, large declines in water in the tidewater goby's habitat are likely to exacerbate threats that alone are not limiting.

A cursory review of the known occupied localities and the threats identified for those localities (Service 2005, Appendix E) does not reveal a correlation between the number of

threats and the status of the tidewater goby at those localities. In other words, localities with a large number of threats do not appear to have lower or more variable population densities than locations with fewer threats. The most likely correlation is between the status and the size of the habitat, with larger habitats having abundant numbers and less vulnerable populations (Service 2005, Appendix E). A more vigorous statistical analysis may reveal some pattern of correlation, but we conclude that combinations of threats and the cumulative impact on tidewater goby populations in those localities with smaller habitats are likely to be greater than they are for larger habitat localities. The reasons for this include the following: (1) There are more refugia in larger habitats; (2) threats are more dispersed; and (3) larger habitats are less vulnerable to short-term impacts.

Summary of Factors

The primary factors that led to the listing of the tidewater goby as endangered in 1994 were: (1) The tidewater goby had been extirpated from nearly 50 percent of the lagoons and estuaries it had inhabited due to habitat alteration (channelization, water diversions, etc.) and drought; (2) only 43 populations remained, of which only 8 were considered large enough to be stable; and (3) the tidewater goby was threatened by development, water quality issues, and other habitat alterations. We concluded in the 1994 listing rule that the downward trend in the tidewater goby's populations was likely to continue; however, when the prolonged drought in California ended and normal rainfall patterns resumed, the number of occupied localities grew through recolonization (or apparent recolonization as greater numbers increased the species' detectability) from 43 up to 114 as of the publication of the final revised critical habitat designation (78 FR 8746), showing the species' resiliency in the face of changing conditions. The other factors that led to the tidewater goby's listing are still acting on the species, but it appears that they are not severe enough at current population levels to place the species currently in danger of extinction.

As an example, our analysis of Factor A concludes that the destruction, modification, or curtailment of tidewater goby habitat is currently a threat, and we expect the threat to continue in the future. While the elements that constitute the Factor A threats (habitat disturbance, sandbar breaching, etc.) that destroy, modify, or curtail habitat are having a negative effect on tidewater goby habitat throughout its range, we conclude that impacts to the tidewater goby from these relatively small projects and activities are not having a substantial effect on the species throughout its range. This is based on the fact that these threats were in place prior to and after the species was listed in 1994 and have continued, yet the tidewater goby rebounded from a severe drought in the face of the Factor A elements (other than climate change). This indicates that the Factor A threats alone are not severe enough to cause the species' decline.

We further conclude that predation or disease alone are not a significant threat to the tidewater goby, although we do have evidence that predation by nonnative fishes may have contributed to the extirpation of some populations. Throughout the species' range, the loss of tidewater goby populations has not been attributed solely to disease, parasites, predation, or competition from other species, and the best available information indicates that such threats are currently only moderately important in the species' survival, although such threats may exacerbate or combine with other threats to increase the species' vulnerability. While we conclude these are only moderately important threats, we cannot reasonably predict whether new nonnative species will be introduced, to what extent they will become established in tidewater goby habitat, and what their effects will be on tidewater goby populations. We may draw different conclusions regarding future introductions of nonnative species, depending on the specific circumstances.

The listing of the tidewater goby under the Act benefits the species in several ways. For example, listing under the Act often requires coordination with the Service if the tidewater goby is present in a project area so that conservation of that species can be considered in the planning and implementation, and requires interagency consultation if a federal action may affect a listed species to ensure that such action is not likely to jeopardize the listed species or destroy or adversely modify its critical habitat. Another potential benefit of the Act is under section 6, which authorizes us to enter into cooperative conservation agreements with States, and to allocate funds for conservation programs to benefit endangered or threatened species. Reclassifying tidewater goby from endangered to threatened would not change any the protections afforded to this species under the Act or other regulations.

With the addition of three new regulations enacted subsequent to the listing of the tidewater goby, existing regulations have slowed the loss, especially on a large scale, of the tidewater goby's habitat. One of the new regulations in particular, the Sikes Act Improvement Act, has resulted in substantial new protections to the tidewater goby and its habitat in southern California.

Although regulations are in place that provide substantial protections to the tidewater goby and its habitat, small-scale loss of habitat continues to occur throughout the range of the species as many regulations allow impacts to habitat to occur under certain conditions, and we therefore conclude that existing regulatory mechanisms are inadequate to protect the tidewater goby without the additional protections afforded under the Act.

From our review of the most recent data and analyses, we conclude that sea levels are rising and may eventually eliminate much of the tidewater goby habitat due to seawater intrusion and changes in hydrology. Combined with past habitat losses and current threats, sea level rise due to climate change poses a severe threat to the species' survival. While sea level rise is occurring and has been since the last century, and we can project what effect rising sea levels will have on the tidewater goby, sea level rise is happening gradually, and demonstrable effects to the tidewater goby will only be manifested after decades of global temperature increases. Habitat at some localities that are small in size and constrained by natural or manmade features will be lost. Some larger localities are less constrained and new habitat may form in upstream areas, but the number of sites where this is likely to occur is limited. While gobies may persist at a limited number of larger sites, by that time, the numbers and sizes of tidewater goby populations will be reduced and populations will be more vulnerable to remaining threats. Thus, sea level rise is a threat to the species in the foreseeable future, but is not an imminent threat.

The tidewater goby is facing numerous threats, including habitat loss from multiple sources, habitat fragmentation due to the loss of stepping stone localities between populations, disruption of metapopulation dynamics and loss of genetic exchange among populations, predation and nonnative competitors, alterations to hydrology (for example, sandbar breaching and channelization), changes in water quality, stochastic events such as drought, and the growing

and inevitable impact of sea level rise. While some of these threats can singly have a substantial impact on individual tidewater goby localities, in most cases it is the combined impact of those threats with prolonged drought and eventually sea level rise that will have the greatest effect on the species.

Recovery Plan

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. 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 help indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species because of any of 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 Wildlife (50 CFR 17.11) 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.

The Recovery Plan for the Tidewater Goby was approved by the Service on December 7, 2005 (Service 2005). The recovery plan has as its overall recovery objective to downlist the species to threatened status, then delist. The primary objective of the recovery plan is to manage the threats to and improve the population status of the tidewater goby sufficiently to warrant reclassification (from endangered to threatened status) or delisting.

The recovery plan established the following criteria for downlisting the tidewater goby from endangered to threatened (Service 2005, pp. 40–41):

(1)(a) Specific threats to each metapopulation, such as habitat destruction and alteration (including coastal development, upstream diversion, channelization of rivers and streams, discharge of agriculture and sewage effluents), introduced predators (such as centrarchid fishes), and competition with introduced species (yellowfin and chameleon gobies, for example), have been addressed through the development and implementation of individual management plans that cumulatively cover the full range of the species.

(1)(b) A metapopulation viability analysis based on scientifically credible monitoring over a 10-year period indicates that each Recovery Unit is viable, with at least 5 subunits in the North Coast Unit, 8 subunits in the Greater Bay Unit, 3 subunits in the Central Coast Unit, 3 subunits in the Conception Unit, 1 subunit in the Los Angeles/Ventura Unit, and 2 subunits in the South Coast Unit to individually having a 75 percent chance of persisting for 100 years.

The first criterion was intended to identify the point at which specific threats to each metapopulation were being adequately managed and addressed. Under criterion (1)(a), some of the past habitat alteration has been addressed through implementation of existing regulations (such as the Clean Water Act), although it has not been eliminated. Only limited, rangewide efforts to eliminate introduced predators have been implemented for the benefit of the tidewater goby. The only management plans of which we are aware that address conservation of the tidewater goby are the INRMPs for MCB Camp Pendleton and VAFB, and plans under development for Mission Creek in Santa Barbara County, the Santa Clara River estuary in Ventura County, and Malibu Lagoon in Los Angeles County. In any case, plans to manage specific threats to the tidewater goby do not cumulatively cover the full range of the species; therefore, recovery criterion 1(a) has not been fully met. However, as discussed above, we have determined that the threats this criterion was intended to address are not as severe as previously thought. We conclude that none of these threats is likely to cause the imminent extinction of the tidewater goby, and therefore, the threats are sufficiently reduced that the requirement to have plans specifically addressing them is no longer an appropriate criterion for downlisting the species to threatened.

The second criterion was intended to indicate whether the species has responded as expected to measures to reduce threats and to ensure that the tidewater goby remains well-distributed and resilient in the face of stochastic events throughout its range. None of the metapopulation viability analyses described in the recovery plan (criterion 1(b)) have been completed, as far as we know. While metapopulation viability analyses have not been conducted, the tidewater goby currently occurs at localities in all six recovery units. The species now occupies nearly three times as many localities as it did at the time of listing, indicating the species is more resilient than previously thought. While we do not have detailed analyses of viability for individual metapopulations, the species' ability to respond positively to the end of drought conditions over approximately a 20-year period and for populations to be recolonized or recover, indicates the species likely has generally exhibited positive demographic characteristics such as reproductive rate and survival. So, while criterion (1)(b) has not been met, we conclude we have sufficient evidence that the species has responded positively to the end of the drought and that previously identified threats have not had as severe an effect on the species as expected.

Despite the fact that none of the downlisting criteria from the recovery plan have been fully achieved, we have concluded that other factors presented in this proposed rule provide sufficient support for our determination. When the tidewater goby was listed in 1994, the number of occupied localities had dropped to 43 in the face of an extended drought, and we were not certain that the unoccupied localities would be recolonized after the drought ended. We had concluded that the species' downward trend would continue due to the other threats, so even when the drought ended we believed the tidewater goby would continue to decline. Upon the resumption of ''normal'' rainfall patterns, the number of localities found to be occupied rebounded to almost three times the number known in 1992, when listing was first proposed, despite the continuing effects of the remaining threats. This indicated to us that species

was more resilient than we had known and that the low numbers seen in response to drought did not mean the species was in imminent danger of extinction. Also, the number of occupied localities had increased so much that even in the face of the ongoing threats and the likelihood that these would continue to affect the tidewater goby in the future, the species is no longer currently at risk of extinction.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the tidewater goby (*Eucyclogobius newberryi*). In our analysis of the 5 factors relating to the species' status we have reached the following conclusions:

Factor A (The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range): We have found that the tidewater goby is currently experiencing some habitat loss and will continue to experience small losses in the foreseeable future. We do not anticipate any repeat of the large losses that occurred prior to regulations that protected coastal wetlands. At the time of listing in 1994, when the tidewater goby occupied only 43 localities and a severe drought was ending, habitat loss posed a relatively greater threat to species. After the drought ended, the number of localities known to be occupied by tidewater gobies has increased to at least 114, and currently available information does not indicate that habitat loss alone is having a substantial effect on the tidewater goby's numbers or distribution. We do anticipate that global sea level rise will have a profound effect on the species' habitat in the foreseeable future; however, we do not believe that the threat from sea level rise is imminent. While sea level rise is occurring and has been since the last century, the change has been and will be gradual, perhaps over decades instead of months or years. The threats discussed under Factor A are not likely to cause the tidewater goby's extinction in the near future; however, sea level rise by itself poses a substantial threat to the species that, while not an imminent threat, is reasonably foreseeable and could lead to the species' extinction.

Factor B (Overutilization for Commercial, Recreational, Scientific, or Educational Purposes): We found no evidence of risk to the tidewater goby from overutilization, nor do we anticipate any such impacts to the species in the foreseeable future.

Factor C (Disease or Predation): Parasites and nonnative predators are likely to be having some negative effects on the tidewater goby. Our review of the available information does not indicate that these negative effects are reducing the tidewater goby's numbers rangewide, but may act in concert with other stressors to have a greater impact at a local level. Disease or predation alone are not sufficient to cause the species' extinction in the foreseeable future.

Factor D (Inadequacy of Existing Regulatory Mechanisms): Existing regulations have been effective at protecting the tidewater goby from large-scale habitat loss, and the enactment of the Sikes Act Improvement Act subsequent to listing has been a major benefit to the species in southern California. However, small-scale, localized habitat loss and alteration continue to occur, and existing regulatory mechanisms are inadequate to protect the tidewater goby without the additional protections afforded under the Act.

Factor E (Other Natural or Manmade Factors Affecting Its Continued Existence): We conclude that some natural or human-caused factors are having a negative effect on the tidewater goby, but we cannot reasonably determine whether the effects of some other factors are negatively impacting the tidewater goby. Habitat fragmentation (natural or anthropogenic) and stochastic events (like drought) have clearly had a negative impact on the tidewater goby since the species has been monitored. However, the best available information does not indicate that competition with other species (native or nonnative) and poor water quality are having an influence on the species' overall status. Our conclusion is that drought and additional fragmentation are foreseeable threats to the tidewater goby and could contribute to the species' extinction in the future, while the rangewide influence of other factors cannot be demonstrated.

Based on the analysis above, we conclude that the tidewater goby is not in danger of extinction throughout all of its range, but instead is threatened; that is, the species is likely to become endangered in the foreseeable future throughout all of its range.

Significant Portion of the Range Analysis

Having examined the status of the tidewater goby throughout all its range and determined that the species is threatened 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.

The geographic range of the tidewater goby is limited to the coast of California (Eschmeyer *et al.* 1983, p. 262; Swift *et al.* 1989, p. 12). The species historically occurred from 5 km (3 mi) south of the California-Oregon border (Tillas Slough in Del Norte County) to 71 km (44 mi) north of the United States-Mexico border (Agua Hedionda Lagoon in San Diego County). The available documentation suggests the northernmost locality that forms one end of the historical and current geographic range of the tidewater goby has not changed over time (see for example, Eschmeyer *et al.* 1983, p. 262; Swift *et al.* 1989, p. 12). Tidewater gobies do not currently occur in Agua Hedionda Lagoon, and the species' southernmost known extant occurrence is the San Luis Rey River 8 km (5 mi) north of Agua Hedionda Lagoon.

Although the northernmost and southernmost extent of the tidewater goby's range has not changed much over time, the species' distribution within the historical range has become patchy and fragmented.

Tidewater gobies are naturally absent from several large (80 to 217 km (50 to 135 mi)) stretches of coastline lacking lagoons or estuaries, and with steep topography or swift currents that may prevent the species from dispersing between adjacent localities (Earl *et al.* 2010, p. 104; Swift *et al.* 1989, p. 13). One such gap of approximately 160 km (100 mi) occurs from the Eel River in Humboldt County to Ten Mile River in Mendocino County. A second gap of approximately 97 km (60 mi) occurs between Lagoon Creek in Mendocino County to Salmon Creek in Sonoma County. Another large, natural gap of approximately 160 km (100 mi) occurs between the Salinas River in Monterey County and Arroyo del Oso in San Luis Obispo County. The southernmost gap, which is most likely the result of habitat loss and alteration, occurs between the Los Angeles Basin (city of Santa Monica, western Los Angeles County) and San Mateo Creek (MCB Camp Pendleton, San Diego County), a distance of approximately 130 km (80 mi).

Habitat loss and other anthropogenic (human-caused) factors have resulted in the tidewater goby now being absent from several localities where it historically occurred. These disappearances from specific localities have created smaller, artificial gaps in the species' geographic distribution (Capelli 1997, p. 7). Such localities include San Francisco Bay in San Francisco and Alameda Counties, and Redwood Creek and Freshwater Lagoon in Humboldt County. In central and northern California, Swift (*in litt.* 2007) believes it very unlikely that genetic interchange is possible between several groups of populations naturally separated by 32 km (20 mi) or more of rugged coastline. As anthropogenic gaps are created of equal or greater distance, recolonization and genetic exchange becomes less likely.

Swift *et al.* (1989, p. 13) reported that, as of 1984, tidewater gobies occurred, or had been known to occur, at 87 localities. This included localities at the extreme northern and southern end of the species' historical geographic range. An assessment of the species' distribution in 1993, using records that were limited to the area between the Monterey Peninsula in Monterey County and the United States-Mexico border, found tidewater gobies occurring at four additional sites since 1984 (Swift *et al.* 1993, p. 129). Other tidewater goby localities have been identified since 1993. Considering all of the known historical and currently occupied sites, tidewater gobies have been documented at 135 localities, and of these 135 localities, 21 (16 percent) are no longer known to be occupied by tidewater gobies (78 FR 8746). Therefore, we conclude that 114 localities are currently occupied (see Figure 1, above). These localities are not regularly monitored so the current status of tidewater goby in many of these places may have changed.

Given their patchy distribution and metapopulation dynamics of extirpation and recolonization, no individual area is likely to be of greater biological or conservation importance than any other area. Additionally, all recovery units, which span the entire extent of the species' range, are currently occupied, so no major portion of the species' range has been lost. Therefore, we conclude that the lost historical range is not a significant portion of the tidewater goby's range.

To further identify potentially significant portions of the range that might warrant further analysis, we considered whether the threats facing the tidewater goby are geographically concentrated or different in some fashion, which could indicate a portion or portions of the range where the species is likely to be endangered and could warrant further consideration of whether it is a significant portion of the species' range.

In the recovery plan (Service 2005, pp. 30–35), we divided the range of the tidewater goby into six recovery units based on observed genetic and morphological differences. Each of the recovery units provides important increments of redundancy, resiliency, and representation that contribute to the species' long-term viability. In our five-factor analysis in this proposed rule, based on the best available information we have identified several threats to the species including small-scale habitat loss, nonnative predators, habitat fragmentation, and competition with other species (see Summary of Factors Affecting the Species section). All these threats occur in each of the recovery units, and the threats are not concentrated more in one unit than another. Additionally, as described above, a cursory review of the known occupied localities and the threats identified for those localities (Service 2005, Appendix E) does not reveal a correlation between the number of threats and the status of the tidewater goby at those localities. In other words, localities with a large number of threats do not appear to have lower or more variable population densities than locations with fewer threats. While threats may vary from locality to locality, differences in number and type of threats don't appear to be causing a greater risk of extirpation in some localities as opposed to others. More importantly, the most serious threats to the tidewater goby are drought and sea level rise, which would have relatively the same effect on each recovery unit. Therefore, we find that none of the six recovery units is likely to be at greater risk of extinction than any other, and therefore none warrants further consideration as potentially endangered significant portions of the range.

Southern California, in particular, could potentially be considered a significant portion of the range for two reasons: (1) In 1999, the Service proposed that threats to the tidewater goby were more concentrated and therefore more severe in the southern California portion of the species' range than they were elsewhere in the range to the north because only six occupied localities remained in southern California (64 FR 33816), and (2) tidewater gobies in the southern California portion of the range have been found to be genetically distinct from those in the rest of the range (see *Species Information* section). Since the Service's 1999 proposal, tidewater gobies now occur at two additional localities bringing the total occupied localities in southern California to eight. More importantly, as discussed under factor D, MCB Camp Pendleton's INRMP, which was put into effect subsequent to the 1999 proposal, provides substantial protections for seven of the eight populations that occur in southern California that were not in place at the time of the proposed rule. Therefore, we no longer consider threats in southern California to be more severe or different from other areas, and therefore conclude the tidewater goby is not likely to be danger of extinction (as opposed to the rangewide status of threatened) in the southern California portion of its range.

In summary, we did not find that any portion of the species' range has a greater concentration of threats than others and, therefore, conclude that no portion warrants further consideration.

Conclusion

Based on the analysis above, we conclude that the tidewater goby is no longer in danger of extinction throughout all or a significant portion of its range, but instead is likely to become endangered in the foreseeable future throughout all or a significant portion of

its range. The species more appropriately meets the definition of a threatened species. Therefore, we propose to reclassify the tidewater goby from an endangered species to a threatened species.

Effects of This Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to reclassify the tidewater goby from endangered to threatened. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout all or a significant portion of its range. However, this reclassification does not significantly change the protection afforded this species under the Act. The regulatory protections of section 9 and section 7 of the Act remain in place. Anyone taking, attempting to take, or otherwise possessing a tidewater goby or parts thereof, in violation of section 9 of the Act, is still subject to a penalty under section 11 of the Act, unless their action is covered under a special rule under section 4(d) of the Act. At this time, we are not proposing a special rule under section 4(d) of the Act for the tidewater goby. Under section 7 of the Act, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the tidewater goby.

Recovery actions directed at the tidewater goby will continue to be implemented as outlined in the recovery plan for the tidewater goby (Service 2005), including development of management plans such as those at MCB Camp Pendleton and VAFB.

Required Determinations

Clarity of This Proposed 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 the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers 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 have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations 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 final rule is available at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2014–0001 or upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES**).

Authors

The primary authors of this proposed rule are staff members of the Service's Ventura Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11 by revising the entry for ''Goby, tidewater'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Goby, tidewater	*Eucyclogobius newberryi.*	U.S.A. (CA)	Entire	T	527	17.95(e)	NA
*	*	*	*	*	*	*	

* * * * *

Dated: March 5, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–05335 Filed 3–12–14; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

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Part III

The President

Order of March 10, 2014—Sequestration Order for Fiscal Year 2015 Pursuant To Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended

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Presidential Documents

Title 3—

The President

Order of March 10, 2014

Sequestration Order for Fiscal Year 2015 Pursuant To Section 251A of the Balanced Budget and Emergency Deficit Control Act, as Amended

By the authority vested in me as President by the laws of the United States of America, and in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act (the ''Act''), as amended, 2 U.S.C. 901a, I hereby order that, on October 1, 2014, direct spending budgetary resources for fiscal year 2015 in each non-exempt budget account be reduced by the amount calculated by the Office of Management and Budget in its report to the Congress of March 10, 2014.

All sequestrations shall be made in strict accordance with the requirements of section 251A of the Act and the specifications of the Office of Management and Budget's report of March 10, 2014, prepared pursuant to section 251A(9) of the Act.

THE WHITE HOUSE,
March 10, 2014.

[FR Doc. 2014–05756
Filed 3–12–14; 11:15 am]
Billing code 3295–F4

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