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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. APHIS–2011–0019]**

**RIN 0579–AD46**

## Importation of Jackfruit, Pineapple, and Starfruit From Malaysia Into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the fruits and vegetables regulations to allow the importation of fresh jackfruit, pineapple, and starfruit from Malaysia into the continental United States. As a condition of entry, all three commodities must be irradiated for insect pests, inspected, and imported in commercial consignments. There will also be additional, commodity-specific requirements for other pests associated with jackfruit, pineapple, and starfruit from Malaysia. This action provides for the importation of jackfruit, pineapple, and starfruit from Malaysia while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* April 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. Juan A. (Tony) Román, Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2242.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–64, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On May 7, 2013, we published in the **Federal Register** (78 FR 26540–26544, Docket No. APHIS–2011–0019) a proposal [1] to amend the regulations concerning the importation of fruits and vegetables to allow the importation of jackfruit, pineapple, and starfruit with stems from Malaysia into the continental United States. We also prepared pest lists identifying those quarantine pests likely to follow the pathway of jackfruit, pineapple, and starfruit imported from Malaysia. These pest lists identified 24 pests of quarantine significance for jackfruit, 22 pests of quarantine significance for pineapple, and 14 pests of quarantine significance for starfruit that could follow the pathway of the importation of these fruits from Malaysia.

In order to provide an appropriate level of phytosanitary protection against the pests of quarantine concern associated with the importation of jackfruit, pineapple, and starfruit from Malaysia into the continental United States, we proposed to require that the jackfruit, pineapple, and starfruit be irradiated for insect pests in accordance with 7 CFR part 305 and the Plant Protection and Quarantine Treatment Manual,[2] be inspected by the national plant protection organization (NPPO) of Malaysia, and be imported only in commercial consignments. We also proposed to require additional, commodity-specific requirements for other pests associated with jackfruit, pineapple, and starfruit from Malaysia.

We solicited comments on our proposal for 60 days ending July 8, 2013. We received two comments by that date, from the Government of Malaysia and a private citizen. One commenter was supportive of the rule. The other commenter expressed concern regarding the requirement for cutting a sample of starfruit to determine freedom from *Cryptophlebia* spp. Specifically, the commenter asked how the fruit would be kept fresh after being cut open. Only a small, representative sample of each consignment of starfruit from Malaysia would be cut open. Those fruits would be discarded after cutting and not offered for export or sale. If a single live *Cryptophlebia* spp. moth is found during sampling, the entire consignment of fruit will be prohibited importation into the United States and a notice of non-compliance will be issued to the NPPO of Malaysia.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**Note:** In our May 2013 proposed rule, we proposed to add the conditions governing the importation of jackfruit, pineapple, and starfruit from Malaysia as § 319.56–59. In this final rule, those conditions are added as § 319.56–65.

### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is amending the fruits and vegetables regulations to allow imports of fresh jackfruit, pineapple, and starfruit with stems from Malaysia into the continental United States under certain phytosanitary requirements. The United States is a net importer of tropical fruits in general and pineapple in particular. Domestically, these fruits can only grow in limited numbers in greenhouses or in the State of Hawaii. In 2006 (the most recent year for which data are available), U.S. production of pineapples (i.e., in Hawaii) was 188,000 metric tons. Between 2003 and 2012, the United States imported an average of 689,000 metric tons of fresh pineapples annually. In 2012, the United States imported 925,000 metric tons of fresh pineapples, which were valued at $513 million. The declining pineapple production in Hawaii is augmented by U.S. imports from Asian countries, Mexico, and Central America.

[1] To view the proposed rule, supporting and related documents, including the economic analysis, and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0019.*

[2] *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

The Government of Malaysia expects to export to the United States around 2,500 metric tons of fresh pineapple, 1,500 metric tons of fresh jackfruit, and 3,000 metric tons of fresh starfruit annually. With respect to average annual U.S. imports of pineapples, the proposed amount consists of less than 0.4 percent of the amount of U.S. pineapple imports. There are no trade data for the other two fruits to compare.

U.S. entities most likely to be directly affected by this rule are importers and wholesale merchants of fresh fruits and vegetables (NAICS 424480). There is no specific data available that would allow us to identify the number of importers and wholesale merchants that trade in fresh jackfruit, pineapple, and starfruit. Assuming that the percentage of small entities importing fresh jackfruit, pineapples, and starfruit into the United States is approximately the same as the percentage of small entities importing all fresh fruits and vegetables, and given the fact that, in 2007 nearly 95 percent (4,207 of 4,437) of fruit and vegetable wholesale establishments that operated the entire year were small by Small Business Administration standards, then nearly all of the entities that may be affected positively by this rule are small. Even though these entities would be affected positively, these effects will be minor due to the small volume of the expected imports from Malaysia.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This final rule allows jackfruit, pineapple, and starfruit with stems to be imported into the continental United States from Malaysia. State and local laws and regulations regarding jackfruit, pineapple, and starfruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0408, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

**E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**List of Subjects in 7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–65 is added to read as follows:

### § 319.56–65 Jackfruit, pineapple, and starfruit from Malaysia.

Fresh jackfruit (*Artocarpus heterophyllus* Lam.), pineapple (*Ananas comosus* (L.) Merr.), and starfruit (*Averrhoa carambola* L.) may be imported into the continental United States from Malaysia only under the conditions described in this section.

(a) *General requirements for jackfruit, pineapple, and starfruit from Malaysia.* (1) Jackfruit, pineapple, and starfruit from Malaysia must be treated for plant pests with irradiation in accordance with part 305 of this chapter.

(2) Jackfruit, pineapple, and starfruit from Malaysia may be imported in commercial consignments only.

(b) *Additional requirements for jackfruit from Malaysia.* (1) If the jackfruit has stems, these stems must be less than 5 cm in length.

(2)(i) The jackfruit must originate from an orchard that was treated during the growing season with a fungicide approved by APHIS for *Phytophthora meadii,* and the fruit must be inspected by the national plant protection organization (NPPO) of Malaysia prior to harvest and found free of this pest; or

(ii) The jackfruit must be treated after harvest with a fungicidal dip approved by APHIS for *P. meadii.*

(3) Each consignment of jackfruit imported from Malaysia into the continental United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Malaysia, with an additional declaration that the jackfruit has been subject to one of the mitigations for *P. meadii* in paragraph (b)(2) of this section and has been inspected prior to shipment and found free of *P. meadii.* Additionally, if the jackfruit has been irradiated in Malaysia, the phytosanitary certificate must have an additional declaration that the fruit has been treated with irradiation in accordance with 7 CFR part 305.

(c) *Additional requirements for pineapple from Malaysia.* (1)(i) The pineapple must originate from an orchard that was treated during the growing season with a fungicide approved by APHIS for *Gliomastix luzulae, Marasmiellus scandens, Marasmius crinis-equi, Marasmius palmivorus,* and *Prillieuxina stuhlmannii,* and the fruit must be inspected by the NPPO of Malaysia prior to harvest and found free of those pests; or

(ii) The pineapple must be treated after harvest with a fungicidal dip approved by APHIS for *G. luzulae, M. scandens, M. crinis-equi, M. palmivorus,* and *P. stuhlmannii.*

(2) The pineapple must be sprayed after harvest but prior to packing with water from a high-pressure nozzle or with compressed air so that all *Achatina fulica* and *Eutetranychus orientalis* are removed from the surface of the pineapple.

(3) Each consignment of pineapple imported from Malaysia into the continental United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Malaysia, with an additional declaration that the pineapple has been subject to one of the mitigations for *G. luzulae, M. scandens, M. crinis-equi, M. palmivorus,* and *P. stuhlmannii* in paragraph (c)(1) of this section, has been treated for *A. fulica* and *E. orientalis* in accordance with paragraph (c)(2) of this section, and has been inspected prior to shipment and found free of *A. fulica, E. orientalis, G. luzulae, M. scandens, M. crinis-equi, M. palmivorus,* and *P. stuhlmannii.* Additionally, if the pineapple has been

irradiated in Malaysia, the phytosanitary certificate must have an additional declaration that the pineapple has been treated with irradiation in accordance with 7 CFR part 305.

(d) *Additional requirements for starfruit from Malaysia.* (1) Before shipment, each consignment of starfruit must be inspected by the NPPO of Malaysia using a sampling method agreed upon by APHIS and the NPPO of Malaysia. As part of this method, a sample must be obtained from each lot, inspected by the NPPO of Malaysia, and found free from *Phoma averrhoae.* The fruit in the sample must then be cut open, inspected, and found free from pupae of *Cryptophlebia* spp. If a single live *Cryptophlebia* spp. moth is found during sampling, the entire consignment of fruit will be prohibited from import into the United States and a notice of non-compliance will be issued to the NPPO of Malaysia.

(2) Each consignment of starfruit imported from Malaysia into the continental United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Malaysia, with an additional declaration that the starfruit has been inspected prior to shipment and found free of *P. averrhoae* and pupae of *Cryptophlebia* spp. Additionally, if the starfruit has been irradiated in Malaysia, the phytosanitary certificate must have an additional declaration that the fruit has been treated with irradiation in accordance with 7 CFR part 305.

(Approved by the Office of Management and Budget under control number 0579–0408)

Done in Washington, DC, this 12th day of March 2014.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2014–06017 Filed 3–18–14; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 730 and 744

**[Docket No. 140227183–4183–01]**

**RIN 0694–AG07**

### Updated Statements of Legal Authority for the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the Code of Federal Regulations (CFR) legal authority paragraphs in the Export Administration Regulations (EAR) to cite a Presidential notice extending an emergency declared pursuant to the International Emergency Economic Powers Act. This is a procedural rule that only updates authority paragraphs of the EAR. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

**DATES:** The rule is effective March 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** William Arvin, Regulatory Policy Division, Bureau of Industry and Security, Email *wlliam.arvin@bis.doc.gov,* Telephone: (202) 482–2440.

**SUPPLEMENTARY INFORMATION:**

### Background

The authority for parts 730 and 744 of the EAR (15 CFR parts 730 and 744) rests, in part, on Executive Order 12947 of January 23, 1995—National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process (60 FR 5079, 3 CFR, 1995 Comp., p. 356) and on annual notices by the President continuing that emergency. This rule updates the authority paragraphs in 15 CFR parts 730 and 744 to cite the notice of January 21, 2014, 79 FR 3721 (January 22, 2014), continuing that emergency.

This rule is purely procedural and makes no changes other than to revise CFR authority paragraphs for the purpose of making the authority citations current. It does not change the text of any section of the EAR, nor does it alter any right, obligation or prohibition that applies to any person under the EAR.

### Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

### Rulemaking Requirements

1. Executive Orders 13563 and 12866 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). This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. It clarifies information and is non-discretionary. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

### List of Subjects

*15 CFR Part 730*

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

*15 CFR Part 744*

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 730 and 744 of the EAR (15 CFR parts 730–774) are amended as follows:

## PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

## PART 744—[AMENDED]

■ 2. The authority citation for 15 CFR part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

Dated: March 13, 2014.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2014–06030 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–33–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## 29 CFR Part 1601

**RIN 3046–AA95**

## Adjusting the Penalty for Violation of Notice Posting Requirements

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.

**DATES:** *Effective Date:* April 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Danielle J. Hayot, Senior Attorney, (202) 663–4695, Office of Legal Counsel, 131 M St. NE., Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY), or to the Publications Information Center at 1–800–669–3362 (toll free).

**SUPPLEMENTARY INFORMATION:** Under section 711 of the Civil Rights Act of 1964 (Title VII), which is incorporated by reference in section 105 of the Americans with Disabilities Act (ADA) and section 207 of the Genetic Information Non-Discrimination Act (GINA), and 29 CFR 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by Title VII, the ADA, or GINA, must post notices describing the pertinent provisions of Title VII, ADA, or GINA. Such notices must be posted in prominent and accessible places where notices to employees, applicants, and members are customarily maintained.

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (''DCIA''), Pub. L. 104–134, Sec. 31001(s)(1), 110 Stat. 1373, each federal agency is required to issue regulations adjusting for inflation the maximum civil penalty that may be imposed pursuant to each agency's statutes. The purpose of the adjustment is to maintain the remedial impact of civil monetary penalties and promote compliance with the law. The EEOC's initial adjustment was published in the **Federal Register** on May 16, 1997, at 62 FR 26934, and raised the maximum penalty per violation of the notice posting requirements from $100 to $110.

Section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the adjustment to a civil monetary penalty reflect the percentage increase in the Consumer Price Index (CPI) between June of the calendar year in which the penalty was last adjusted (1997) and June of the calendar year preceding the revised adjustment (2013). The DCIA defines the CPI as the CPI for all urban consumers published by the Department of Labor (CPI–U), available at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.* As the last adjustment was made and published on May 16, 1997, the inflation adjustment set forth in this final rule was calculated by comparing the CPI–U for June 1997 (160.3) with the CPI–U for June 2013 (233.504), resulting in an inflation adjustment factor of 45.67% (233.504–160.3)/160.3=.45667).[1]

Once the inflation adjustment factor is determined, the second step is to multiply the inflation adjustment factor (45.67%) by the current civil penalty amount ($110) to calculate the raw inflation increase ($50.24). The third step is to round this raw inflation increase to the nearest multiple of a hundred (here $100 because $50.24 is closer to $100 than to $0).The fourth step is to add the rounded inflation increase ($100) to the current civil penalty amount ($110) to obtain the new, inflation-adjusted civil penalty amount ($210). Accordingly, we are adjusting the maximum penalty per violation specified in 29 CFR 1601.30(a) from $110 to $210.

[1] Penalty increases are determined by the specific rounding formula prescribed by the Debt Collection Improvement Act of 1996. Because of the small size of the penalty, the rounding rules required an inflation increase of 45 percent or more before an increase could be effectuated, which did not occur until the June 2013 CPI was announced in July 2013.

**Regulatory Procedures**

*Administrative Procedure Act*

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary or contrary to the public interest. EEOC finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because this adjustment of the fine is required by the Debt Collection Improvement Act of 1996, the formula for increasing the penalty is prescribed by statute, and the Commission has no discretion in determining the amount of the published adjustment. Accordingly, we are issuing this revised regulation as a final rule without notice and comment.

*Executive Order 13563 and 12866*

In promulgating this final rule, EEOC has adhered to the regulatory philosophy and applicable principles set forth in Executive Order 13563. This final rule was not reviewed by Office of Management and Budget (OMB) under Executive Order 12866 because it is not a ''significant regulatory action'' as defined by section 3(f) of Executive Order 12866. The great majority of employers and entities covered by these regulations comply with the posting requirement, and, as a result, the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post required notices in violation of the regulation and statute.[2] The rule only increases the penalty by $100 for each separate offense, nowhere near the $100 million figure that would require OMB review.

*Paperwork Reduction Act*

This final rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Regulatory Flexibility Act*

A regulatory flexibility analysis is only required by the Regulatory Flexibility Act (5 U.S.C. 601–612) when notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

*Unfunded Mandates Reform Act of 1995*

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

*Congressional Review Act*

The Congressional Review Act (CRA) requires 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. EEOC will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the effective date of the rule. Under the CRA, 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 the CRA at 5 U.S.C. 804(2).

**List of Subjects in 29 CFR Part 1601**

Administrative practice and procedure.

For the Commission.

Dated: March 12, 2014.

**Jacqueline A. Berrien,**

*Chair.*

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR Part 1601 as follows:

## PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for Part 1601 continues to read as follows:

**Authority:** 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11.

■ 2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

**§ 1601.30 Notices to be posted.**

* * * * *

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than $210 for each separate offense.

[FR Doc. 2014–06006 Filed 3–18–14; 8:45 am]

BILLING CODE 6570–01–P

[2] In the last ten years, the highest number of charges alleging notice posting violations occurred in 2010. In that year, only 114 charges of the 90,837 Title VII, ADA, and GINA charges (.13%) contained a notice posting violation.

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2014–0102]**

**RIN 1625–AA00**

## Safety Zone; The Boat Show Marathon; Lake Havasu, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone within the navigable waters of Lake Havasu for the 2014 Lake Havasu Boat Show Water Ski Marathon. The temporary safety zone is necessary to provide safety for the water ski race participants, crew, rescue personnel, and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 8:00 a.m. to 4:00 p.m. on April 12, 2014 and April 13, 2014.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2014–0102]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Giacomo Terrizzi, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

## A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable. Logistical details did not present the Coast Guard enough time to draft, publish, and receive public comment on an NPRM. As such, the event would occur before the rulemaking process was complete. Immediate action is needed to help protect the safety of the participants, crew, spectators, and participating vessels from other vessels during the event.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would be contrary to the public interest, because immediate action is necessary to protect the safety of the participants from the dangers associated with other vessels transiting this area while the skiing event occurs.

## B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The Boat Show Marathon will consist of 150 water skiers. The water ski race course consists of three races per day around a closed 2.5 mile race course for a specified amount of laps on a portion of Lake Havasu located north of the London Bridge Channel and west of Windsor Park.

The course requires a safety zone while the skiers are on the course, thus restricting vessel traffic within a portion of Lake Havasu during the eight hours scheduled for three races held each racing each day. There will be six patrol vessels and two rescue vessels provided by the sponsor to patrol the boundaries of the safety zone.

## C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced between the hours of 8:00 a.m. to 4:00 p.m. on April 12, 2014 and April 13, 2014. The limits of the safety zone will include a portion of Lake Havasu north of the London Bridge Channel and west of Windsor Park encompassed by the following coordinates:

34°28′38.6″ N, 114°21′20.4″ W,
34°29′40.8″ N, 114°21′44.5″ W,
34°29′24.0″ N, 114°22′53.7″ W and
34°28′38.6″ N, 114°22′51.8″ W

The safety zone is necessary to provide for the safety of participants, crew, rescue personnel, and other users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the safety zone being of a limited duration of no more than eight hours each day, and limited to a relatively small geographic area of Lake Havasu.

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of the Colorado River from 8:00 a.m. to 4:00 p.m. on April 12, 2014 and April 13, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone impacts a relatively small area. Small entities can conduct their activities in areas not impacted by this event by transiting around the event or gaining permission by the Captain of the Port, or his designated representative for an escort through the race area between the three races held each day. This annual event included planning with various stakeholders prior to the event permit request was submitted. Finally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

### *3. Assistance for Small Entities*

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

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

*4. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–623 to read as follows:

**§ 165.T11–623 Safety Zone; The Boat Show Marathon, Lake Havasu, AZ.**

(a) *Location.* The limits of the safety zone will include a portion of Lake Havasu north of the London Bridge Channel and west of Windsor Park encompassed by the following coordinates:

34°28′38.6″ N, 114°21′20.4″ W,

34°29′40.8″ N, 114°21′44.5″ W,

34°29′24.0″ N, 114°22′53.7″ W and

34°28′38.6″ N, 114°22′51.8″ W

(b) *Enforcement Period.* This section will be enforced on April 12, 2014 and April 13, 2014. It will be enforced from 8:00 a.m. to 4:00 p.m. each day.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may initiate request authorization to do so from the event sponsor who may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard or designated patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 4, 2014.

**S. M. Mahoney,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2014–05947 Filed 3–18–14; 8:45 am]

BILLING CODE 9110–04–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R05–OAR–2013–0415; FRL 9908–16–Region 5]**

## Approval and Promulgation of Air Quality Implementation Plans; Indiana; Evansville Area; 1997 Annual Fine Particulate Matter Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a request by Indiana to revise the 1997 annual fine particulate matter ($PM_{2.5}$) maintenance air quality state implementation plan (SIP) for the Evansville/Southwestern Indiana Area to replace onroad emissions inventories and motor vehicle emissions budgets (budgets) with inventories and budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) emissions model. Indiana submitted the SIP revision request for the Evansville Area on July 2, 2013.

**DATES:** This direct final rule is effective May 19, 2014, unless EPA receives adverse comments by April 18, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0415, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R05–OAR–2013–0415. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353–8777 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is EPA approving?
II. What is the background for this action?
  a. SIP Budgets and Transportation Conformity
  b. Prior Approval of Budgets
  c. The MOVES Emissions Model
  d. Submission of MOVES2010a-Based Inventories
III. What are the criteria for approval?
IV. What is EPA's analysis of the state's submittal?
  a. The Revised Inventories
  b. Approvability of the MOVES2010a-Based Budgets
  c. Applicability of MOBILE6.2-Based Budgets
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

### I. What is EPA approving?

EPA is approving new MOVES2010a-based onroad emissions inventories and budgets for the Evansville, Indiana 1997 annual $PM_{2.5}$ maintenance area that will replace MOBILE6.2-based inventories and budgets in the SIP. The Evansville, Indiana area is comprised of Dubois, Vanderburgh, and Warrick Counties, Montgomery Township in Gibson County, Ohio Township in Spencer County, and Washington Township in Pike County. The area was redesignated to attainment of the 1997 annual $PM_{2.5}$ standard, effective on October 27, 2011 (76 FR 59527). MOBILE6.2-based onroad emissions inventories and budgets were approved in that action. Upon effective date of approval of the MOVES2010a-based budgets, they must be used in future transportation conformity analyses for the area as required by section 176(c) of the Clean Air Act (CAA). See the official release of the MOVES2010 emissions model (75 FR 9411–9414) for background, and section II.c. below for details.

### II. What is the background for this action?

#### *a. SIP Budgets and Transportation Conformity*

Under the CAA, states are required to submit control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given national ambient air quality standard (NAAQS). These SIP revisions and maintenance plans include budgets of onroad mobile source emissions for criteria pollutants and/or their precursors. Transportation plans and projects ''conform'' to (i.e., are consistent with) the SIP when they will

not cause or contribute to air quality violations, or delay timely attainment of the NAAQS or an interim milestone.

*b. Prior Approval of Budgets*

On September 27, 2011 (76 FR 59527), EPA approved MOBILE6.2-based budgets for the Evansville 1997 annual $PM_{2.5}$ maintenance area for direct emissions of $PM_{2.5}$ and emissions of its precursor pollutant, nitrogen oxides ($NO_X$). The Evansville area's $PM_{2.5}$ maintenance plan established 2015 and 2022 budgets. These budgets demonstrated a reduction in emissions from the monitored attainment year.

*c. The MOVES Emissions Model*

The MOVES model is EPA's state of the art tool for estimating highway emissions. EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). Use of the MOVES model is required for regional emissions analyses for transportation conformity determinations outside of California that begin after March 2, 2013.

The MOVES model was used to estimate emissions in the areas for the same milestone years as the original onroad emissions inventories and budgets in the SIP. The Indiana Department of Environmental Management (IDEM) is revising the onroad emissions inventories and budgets using the latest planning assumptions, including population and employment updates. In addition, newer vehicle registration data have been used to update the age distribution of the vehicle fleets. Since future demonstrations of conformity will use emissions estimates derived with MOVES, it is appropriate to establish benchmarks based on MOVES. The interagency consultation groups for these areas have had extensive consultation on the requirements and need for new budgets.

*d. Submission of MOVES2010a-Based Inventories*

Indiana submitted onroad inventories to EPA based on MOVES2010a that cover the Evansville, Indiana area on July 2, 2013. During the state public comment period, Indiana did not receive any comments on its submittal.

The new MOVES2010a-based budgets taken from these inventories are for the years 2015 and 2020 for both $PM_{2.5}$ and $NO_X$. The budgets for these areas are detailed later in this notice.

TABLE 1—TOTAL ONROAD $PM_{2.5}$ EMISSIONS WITH MOVES2010A MOBILE EMISSIONS IN EVANSVILLE, INDIANA

[Tons per day]

| Sector | 2005 Attainment | 2015 Interim | 2022 Maintenance |
|---|---|---|---|
| Onroad | 440.28 | 199.93 | 100.45 |

TABLE 2—TOTAL $NO_X$ EMISSIONS WITH MOVES2010A MOBILE EMISSIONS IN EVANSVILLE, INDIANA

[Tons per day]

| Sector | 2005 Attainment | 2015 Interim | 2022 Maintenance |
|---|---|---|---|
| Onroad | 12,336.71 | 5,642.95 | 3,173.08 |

As shown in tables 1 and 2, the submittal demonstrates that onroad emissions decrease considerably between the attainment year and the maintenance year. The submittal demonstrates that the MOVES2010a-based onroad emissions' rate of decline is greater than the rate of decline of the originally approved MOBILE6.2-based onroad emissions. No additional control measures were needed to maintain the 1997 annual $PM_{2.5}$ standard in the Evansville area.

**III. What are the criteria for approval?**

EPA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (e.g., reasonable further progress, attainment, or maintenance). The SIP must also meet any applicable SIP requirements under CAA section 110. In addition, adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate and approve them for conformity purposes.

States can revise their budgets and inventories for specific areas using MOVES without revising their entire SIP if (1) the SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall effectiveness of the SIP. The submittal meets this requirement as described below in the next section.

For more information, see EPA's latest ''Policy Guidance on the Use of MOVES2010 for SIP Development, Transportation Conformity, and Other Purposes'' (April 2012), available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm# models*.

**IV. What is EPA's analysis of the state's submittal?**

*a. The Revised Inventories*

The SIP revision request for the area's 1997 annual $PM_{2.5}$ maintenance plan seeks to revise only the onroad mobile source inventories. IDEM has certified that the control strategies for the area remain the same as in the original SIP, and that no other control strategies are necessary. IDEM has determined that growth and control strategy assumptions for non-mobile sources (i.e., area, nonroad, and point) have not changed significantly from the original submittal. This is corroborated by the monitoring data for the area, which continue to monitor attainment for the 1997 annual $PM_{2.5}$ standard. IDEM's submittal confirms that in the revised SIP, onroad emissions in the area continue to decline and remain below the attainment levels.

Indiana has submitted budgets taken from the MOVES 2010a-based onroad inventories for the Evansville area. The revised budgets are displayed in table 3.

TABLE 3—MOTOR VEHICLE EMISSION BUDGETS (MOVES) FOR THE EVANSVILLE, INDIANA 1997 $PM_{2.5}$ AREA IN TONS PER YEAR

| Year | 2015 | 2022 |
|---|---|---|
| $PM_{2.5}$ ..... | 199.93 | 100.45 |
| $NO_X$ ..... | 5,642.95 | 3,173.08 |

*b. Approvability of the MOVES2010a-Based Budgets*

EPA is approving the MOVES2010a-based budgets submitted by Indiana for use in determining transportation conformity in the Evansville, Indiana 1997 annual $PM_{2.5}$ maintenance area. EPA evaluated the MOVES2010a-based budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and SIP requirements.

Before submitting the revised budgets, IDEM followed all necessary conformity procedures. The budgets are clearly identified and precisely quantified in the submittal. The budgets, when considered with other emissions sources, are consistent with continued maintenance of the 1997 annual $PM_{2.5}$ standard. The budgets are clearly related to the emissions inventories and control measures in the SIP. The changes from the previous budgets are clearly explained with the change in the model from MOBILE6.2 to MOVES2010a and the revised and updated planning assumptions. The inputs to the model are detailed in the Appendices to the submittal. EPA has reviewed the inputs to the MOVES2010a modeling and participated in the consultation process. The Federal Highway Administration and the Indiana Department of Transportation have taken a lead role in working with the area's metropolitan planning organization to provide accurate, timely information and inputs to the MOVES2010a model runs. The state has documented that growth and control strategy assumptions for non-motor vehicle sources (i.e. area, nonroad, and point) continue to be valid and any minor updates do not change the overall conclusions of the SIP.

Indiana's submittal confirms that the SIP continues to demonstrate maintenance of the 1997 annual $PM_{2.5}$ standard, and onroad $NO_X$ and $PM_{2.5}$ emissions in the revised SIP continue to decrease from the attainment year to the final year of the maintenance plan for the area, as shown in tables 1 and 2.

*c. Applicability of MOBILE6.2-Based Budgets*

Upon the effective date of the approval of the revised budgets, the state's existing MOBILE6.2-based budgets for the area will no longer be applicable for transportation conformity purposes.

**V. What action is EPA taking?**

EPA is approving the onroad mobile source emissions inventories and budgets for the Evansville, Indiana 1997 annual $PM_{2.5}$ maintenance plan, as submitted on July 2, 2013. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 19, 2014 without further notice unless we receive relevant adverse written comments by April 18, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. 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. If we do not receive any comments, this action will be effective May 19, 2014.

**VI. Statutory and Executive Order Reviews**

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by May 19, 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, Nitrogen dioxide, Particulate matter.

Dated: March 4, 2014.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR Part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (e) is amended by adding a new entry in alphabetical order for ''Evansville/Southwest Indiana Area 1997 annual fine particulate matter maintenance plan'' to read as follows:

**§ 52.770 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

| Title | Indiana date | EPA Approval | Explanation |
|---|---|---|---|
| * * | * | * * | * * |
| Evansville/Southwest Indiana Area 1997 annual fine particulate matter maintenance plan. | ..... | 03/19/14, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. | Revision to motor vehicle emission budgets. |
| * * | * | * * | * * |

■ 3. Section 52.776 is amended by adding paragraph (v)(5) to read as follows:

**§ 52.776 Control Strategy: Particulate matter.**

* * * * *

(v) * * *

(5) Approval—On July 2, 2013 Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 annual fine particulate matter maintenance plan for the Evansville maintenance area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2015 motor vehicle emissions budgets are 199.93 tpy $PM_{2.5}$ and 5,642.95 tpy $NO_X$. The 2022 motor vehicle emissions budgets are 100.45 tpy $PM_{2.5}$ and 3,173 tpy $NO_X$.

* * * * *

[FR Doc. 2014–05903 Filed 3–18–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2013–0657; FRL–9907–00-Region 9]**

## Approval and Promulgation of Implementation Plans; State of Arizona; Payson $PM_{10}$ Air Quality Planning Area

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is approving a revision to the Payson portion of the Arizona State Implementation Plan (SIP) submitted by the Arizona Department of Environmental Quality on January 23, 2012. This revision consists of the second ten-year maintenance plan for the Payson air quality planning area for the national ambient air quality standards (NAAQS) for particulate matter less than 10 microns in diameter ($PM_{10}$). EPA is approving this plan based on the conclusion that the plan adequately provides for continued maintenance of the $PM_{10}$ NAAQS in the Payson area through 2022. EPA is taking this action pursuant to those provisions of the CAA that obligate the Agency to take action on submittals of revisions to SIPs. The effect of this action is to make the State's continuing commitments with respect to maintenance of the $PM_{10}$ NAAQS in the Payson area federally enforceable for another ten years.

**DATES:** This rule is effective on May 19, 2014 without further notice, unless EPA receives adverse comments by April 18, 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–2013–0657, 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.

*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:** Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov.*

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

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## I. Summary of Action

Under section 110(k) of the Clean Air Act (CAA or ''Act''), we are approving the *Final Update of the Limited Maintenance Plan for the Payson $PM_{10}$ Maintenance Area* (December 2011) (''Second Ten-Year Limited Maintenance Plan,'' or ''Second Ten-Year LMP'') submitted on January 23, 2012 by the Arizona Department of Environmental Quality (ADEQ) as a revision to the Arizona State Implementation Plan (SIP). We find that the submittal meets subsequent maintenance plan requirements under CAA section 175A(b).

## II. Introduction

### *A. Clean Air Act Requirements and Air Quality Designations and Plans for the Payson Area*

Under the Clean Air Act (CAA or ''Act''), EPA is required to establish national ambient air quality standards (NAAQS or ''standards'') for pervasive air pollutants at levels that protect the public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (''microns''), or $PM_{10}$, is one of the air pollutants for which EPA has established health-based standards. On July 1, 1987, EPA promulgated two standards for $PM_{10}$: a 24-hour standard of 150 micrograms per cubic meter (μg/m$^3$) and an annual $PM_{10}$ standard of 50 μg/m$^3$. 52 FR 24634 (July 1, 1987). Effective December 18, 2006, EPA revoked the annual $PM_{10}$ standard but retained the 24-hour $PM_{10}$ standard. 71 FR 61144 (October 17, 2006). In this document, references to the $PM_{10}$ NAAQS or $PM_{10}$ standard refer to the 24-hour-average standard of 150 micrograms per cubic meter (μg/m$^3$), unless otherwise noted.

Under section 107(d) of the CAA, EPA is required to designate areas of the country as attainment, unclassifiable, or nonattainment for each of the NAAQS depending on whether the NAAQS are being met. Under the CAA Amendments of 1990, the Payson area was designated as part of a large ''unclassifiable'' area in Arizona for the $PM_{10}$ NAAQS. In 1993 (58 FR 67334, December 21, 1993), in light of $PM_{10}$ NAAQS violations monitored in 1989 and 1990, EPA redesignated the Payson air quality planning area as a ''moderate'' nonattainment area for the $PM_{10}$ NAAQS.[1] To meet the SIP planning requirements for such areas, State and local agencies adopted and implemented a number of control measures to reduce $PM_{10}$ emissions and lower ambient $PM_{10}$ concentrations in the Payson area, including the paving of certain unpaved roads and restrictions on residential wood combustion. In 2002 (67 FR 7082, February 15, 2002), EPA determined that the Payson area had attained the $PM_{10}$ NAAQS by the applicable attainment date of December 31, 2000.

Later that same year, ADEQ submitted a maintenance plan, titled *Payson Moderate Area $PM_{10}$ Maintenance Plan and Request for Redesignation to Attainment Submittal Package* (March 2002) (''First Ten-Year Limited Maintenance Plan'' or ''First Ten-Year LMP'') to EPA as a revision to the Arizona SIP, and requested redesignation of the Payson area to attainment. The First Ten-Year LMP was intended to provide for maintenance of the $PM_{10}$ NAAQS in the Payson area for ten years after redesignation. In June 2002 (67 FR 43013, June 26, 2002), EPA approved the First Ten-Year LMP for the Payson area as providing for maintenance through 2012, and redesignated the area to attainment for the $PM_{10}$ NAAQS.

Under CAA section 175A(b), former nonattainment areas that are redesignated to attainment and subject to a maintenance plan must develop, adopt, and submit a subsequent maintenance plan that provides for continued maintenance of the NAAQS for a second ten-year period following the end of the first ten-year period. On January 23, 2012, ADEQ submitted the Second Ten-Year LMP for the Payson area to meet the requirement for a subsequent maintenance plan under CAA section 175A(b). The Second Ten-Year LMP is intended to provide for continued maintenance of the $PM_{10}$ NAAQS for the ten-year period following the end of the first ten-year period, i.e., through year 2022.

Consistent with requirements at the time, the First Ten-Year LMP provided for maintenance of both the 24-hour average and annual average $PM_{10}$ NAAQS. However, as noted above, since then, EPA has revoked the annual average $PM_{10}$ NAAQS, and thus, the Second Ten-Year LMP, which is the subject to today's action, addresses only maintenance of the 24-hour $PM_{10}$ NAAQS.

[1] The Payson air quality planning area is 144 square miles in size, centered around the Town of Payson, Arizona, a community of approximately 17,000 persons in the north central portion of Gila County, approximately 90 miles northeast of Phoenix. For the precise boundaries of this area, please see the entry for Payson in the $PM_{10}$ table in 40 CFR 81.303.

*B. Applicable CAA Provisions for $PM_{10}$ Maintenance Plans*

CAA section 175A provides the general framework for maintenance plans. The maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, and must include any additional control measures as may be necessary to ensure such maintenance. In addition, maintenance plans are to contain such contingency provisions as we deem necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the State will implement all control measures contained in the nonattainment SIP prior to redesignation. Beyond these provisions, however, CAA section 175A does not define the contents of a maintenance plan.

With respect to subsequent maintenance plans, CAA section 175A(b) requires States to submit an additional SIP revision to maintain the NAAQS for ten years after the expiration of the ten-year period covered by the initial maintenance plan approved in connection with redesignation of the area from nonattainment to attainment. Our primary guidance on maintenance plans is a September 4, 1992 memo from John Calcagni, Director, Office of Air Quality Planning and Standards, to Directors of EPA Regional Air Programs, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo''). In addition, we have relied upon guidance discussed in the next subsection of this document.

*C. Limited Maintenance Plan (LMP) Option*

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate $PM_{10}$ nonattainment areas seeking redesignation to attainment (Memorandum from Lydia Wegman, Director, Office of Air Quality Planning and Standards, to Directors of EPA Regional Air Programs entitled ''Limited Maintenance Plan Option for Moderate $PM_{10}$ Nonattainment Areas'' or ''LMP policy''). Herein, the option set forth in the LMP policy is referred to as the ''LMP option.''

The LMP policy contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard ten years into the future. Thus, EPA provided the maintenance demonstration for areas meeting the criteria outlined in the memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP, are no longer necessary.

To qualify for the LMP option, the State must demonstrate that the area meets the criteria described below. First, the area should be attaining the $PM_{10}$ NAAQS. Second, the average $PM_{10}$ design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 98 $\mu g/m^3$ for the $PM_{10}$ NAAQS, with no violations at any monitor in the nonattainment area. (See section IV of the LMP policy.) The 98 $\mu g/m^3$ criterion provides a margin of safety for the $PM_{10}$ NAAQS, which is 150 $\mu g/m^3$. If an area cannot meet this test, it may still be able to qualify for the LMP option if the average design values of the site are less than their respective site-specific critical design values. Third, the area should expect only limited growth in on-road motor vehicle $PM_{10}$ emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. Lastly, the LMP policy identifies core provisions that must be included in all LMPs. These provisions include an attainment-year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

The LMP policy also states that once the LMP option is in effect, the State must verify in each subsequent year that the area still qualifies for the LMP option by recalculating the area's average design value annually and determining that the LMP criteria are met for that year. If they are not met, the State should act to reduce emissions enough to requalify for the LMP option, for example, by using a contingency measure or other SIP-approved measure. If the attempt to reduce $PM_{10}$ concentrations fails, or if it succeeds but in the future it becomes necessary to reduce $PM_{10}$ concentrations again, the area no longer qualifies for an LMP and a full maintenance plan would need to be developed.

The LMP policy was written to address the maintenance plan requirements under section 175A for certain moderate $PM_{10}$ nonattainment areas seeking redesignation to attainment. However, we believe the principles set forth therein are also appropriate for former moderate $PM_{10}$ nonattainment areas that have been redesignated to attainment and are subject to an approved maintenance plan, but must develop and submit a subsequent maintenance plan to comply with CAA section 175A(b).

**III. Review of the Arizona SIP Submittal Addressing These Provisions [2]**

*A. Has the State met the procedural requirements for SIP revisions?*

Section 110(l) of the Act requires States to provide reasonable notice and public hearing prior to adoption of SIP revisions. Documents in ADEQ's submittal describe the public review process followed by ADEQ for the Second Ten-Year LMP for the Payson area prior to adoption and submittal to EPA as a revision to the Arizona SIP. The documentation provides evidence that reasonable notice of a public hearing was provided to the public and a public hearing was conducted prior to adoption.

The documentation is found in enclosure 4 of the January 23, 2012 submittal. Enclosure 4 includes evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption. Specifically, the affidavit of publication included in enclosure 4 shows that notice of a public hearing and the availability of, and opening of a 30-day comment period on, the Second Ten-Year LMP for the Payson area was published on September 30, 2011, in a newspaper of general circulation within the Payson area. The public hearing was held on November 2, 2011. No comments were received during the public comment period or at the public hearing. ADEQ adopted the plan and submitted it to EPA for approval on January 23, 2012.

Based on the documentation provided in enclosure 4 that was submitted by ADEQ with the Second Ten-Year LMP for the Payson area, we find that the submittal of the plan as a SIP revision satisfies the procedural requirements of section 110(l) of the Act.

*B. Has the State demonstrated that the area continues to qualify for the Limited Maintenance Plan option?*

Payson originally qualified for the LMP Option in 2002. In order to continue to qualify, the State must demonstrate that the area continues to meet the requirements of the LMP policy for the following ten-year period.

[2] Our evaluation of the Second Ten-Year Maintenance Plan for the Payson area is presented in this section of the document. Further details on such issues as data completeness, calculation of five-year design values, residential wood combustion emissions estimates, industrial source emissions estimates, control measures, and the motor vehicle regional analysis are presented in our Technical Support Document titled ''Ten-year Update for Limited Maintenance Plan for PM–10; State of Arizona; Payson,'' dated January 2, 2014.

For the reasons given below, we conclude that the Payson area continues to qualify for the LMP option and that the Second Ten-Year LMP for the Payson area meets all applicable requirements for subsequent maintenance plans under CAA section 175A(b).

Continued Attainment of the NAAQS

To qualify for the LMP Option, the first criterion is that the area is attaining the $PM_{10}$ NAAQS. Generally, EPA determines whether an area's air quality is meeting the $PM_{10}$ NAAQS based upon complete,[3] quality-assured, and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area, and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by State, local, or Tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of an area. All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the $PM_{10}$ standard is determined by calculating the expected number of exceedances of the standard in a year. The $PM_{10}$ standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. See 40 CFR 50.6 and 40 CFR part 50, appendix K. Generally, three consecutive years of air quality data are required to show attainment of the $PM_{10}$ standard. See 40 CFR part 50, appendix K.

ADEQ is responsible for monitoring ambient air quality outside the metropolitan areas in Arizona and is responsible for monitoring ambient air quality in the Payson area. Annually, ADEQ submits monitoring network plan reports to EPA. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. EPA reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR 58.10. EPA also conducts periodic technical system audits of state and local monitoring programs.

In our most recent technical system audit of ADEQ's monitoring program, we concluded, generally, that ADEQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants.[4] Also, ADEQ annually certifies that the data it submits to AQS are quality-assured.[5]

ADEQ has operated a SLAMS $PM_{10}$ monitor in the Town of Payson for more than 20 years. ADEQ's Payson monitor has been relocated a number of times, but, since 1999, has been located on West Aero Drive in Payson, and is referred to as the Payson Wells Site. This monitor was sited to provide $PM_{10}$ concentration data at a neighborhood scale[6] to provide data for comparison with the NAAQS. ADEQ operates a partisol sampler at the Payson site, and, in 2009, added a second collocated partisol sampler for quality assurance purposes. Both collocated monitors run on a one-day-in-six monitoring schedule. EPA's most recent audit of ADEQ's monitoring program includes a number of findings in areas where ADEQ's monitoring program should be strengthened, but none of these findings cast significant doubt on the reliability of the data collected at the Payson site.

Table 1 summarizes the $PM_{10}$ concentration data collected at the Payson monitor over the past 12 years, but for the purposes of determining current attainment of the NAAQS, we have focused our review on the data for the most recent three-year period (2010–2012). As shown in Table 1, the $PM_{10}$ data from the Payson monitor represents a complete data set for the 2010–2012 period. Furthermore, this data set has been quality-assured and certified by ADEQ. No exceedances were recorded at the Payson monitor over the 2010–2012 period, and the maximum $PM_{10}$ concentration measured over that period was 44 μg/m³, which is less than one-third of the 150 μg/m³ standard.

Thus, the expected number of exceedances per year for the Payson monitor for the most recent three-year period (i.e., 2010 to 2012) was 0.0 days per year. As such, based on complete, quality-assured and certified data for the 2010–2012 period, we conclude that the Payson area is attaining the standard, and thereby meets the first criterion for the LMP option. Data from 2013, while incomplete and preliminary, are also consistent with this finding of attainment.

TABLE 1—SUMMARY OF 2002–2013 $PM_{10}$ MONITORING DATA FOR PAYSON AREA

| Year | Maximum level (μg/m³) | Percent valid samples | Expected exceedances per year | Monitored 5-year design value (μg/m³) | 5-year design value with motor vehicle growth (μg/m³) | Critical design value (μg/m³) |
|---|---|---|---|---|---|---|
| 2002 | 45 | 87 | 0.0 | 88 | 88 | NA |
| 2003 | 98 | 90 | 0.0 | 98 | 99 | 127 |
| 2004 | 52 | 93 | 0.0 | 98 | 100 | 131 |
| 2005 | 80 | 80 | 0.0 | 98 | 100 | 134 |
| 2006 | 66 | 95 | 0.0 | 98 | 101 | 127 |
| 2007 | 61 | 97 | 0.0 | 98 | 102 | 129 |
| 2008 | 42 | 97 | 0.0 | 80 | 85 | NA |
| 2009 | 40 | 95 | 0.0 | 80 | 85 | NA |
| 2010 | 42 | 98 | 0.0 | 66 | 72 | NA |
| 2011 | 39 | 97 | 0.0 | 61 | 68 | NA |
| 2012 | 44 | 98 | 0.0 | 44 | 52 | NA |

[3] For $PM_{10}$, a ''complete'' set of data includes a minimum of 75 percent of the scheduled $PM_{10}$ samples per quarter. See 40 CFR part 50, appendix K, section 2.3(a).

[4] See EPA's final report titled, ''Technical System Audit, Arizona Department of Environmental Quality, Ambient Air Monitoring Program, April 9-April 13, 2012,'' dated January 2013.

[5] See, e.g., the letter from Eric C. Massey, Director, Air Quality Division, ADEQ, to Deborah Jordan, Air Division Director, EPA Region IX, dated May 16, 2013, certifying the ambient air quality data collected at the Payson site for year 2012.

[6] In this context, ''neighborhood scale'' refers to conditions throughout some reasonably homogeneous urban sub-region with dimensions of a few kilometers. See 40 CFR part 58, appendix D, section 4.6. Specific information about the Payson Wells Site in this paragraph comes from an ADEQ report titled ''State of Arizona Air Monitoring Network Plan for the Year 2013,'' dated October 29, 2013.

TABLE 1—SUMMARY OF 2002–2013 $PM_{10}$ MONITORING DATA FOR PAYSON AREA—Continued

| Year | Maximum level (μg/m³) | Percent valid samples | Expected exceedances per year | Monitored 5-year design value (μg/m³) | 5-year design value with motor vehicle growth (μg/m³) | Critical design value (μg/m³) |
|---|---|---|---|---|---|---|
| 2013 | 58 | — | — | — | — | — |

Sources: (1) AQS QuickLook report dated January 24, 2014. Data is from ADEQ's monitor located on West Aero Drive in Payson, Arizona. (2) The growth increment from motor vehicles was based on an estimated overall motor vehicle growth increment of 7.7 μg/m³ from 2002 to 2012 (see 67 FR at 43017, June 26, 2002), which was interpolated to add 0.77 μg/m³ per year during that period. (3) Critical Design Values were calculated by ADEQ in their annual LMP eligibility reports for the Payson $PM_{10}$ area, which are included in the docket for this rulemaking.

Notes:

For the purposes of comparison, the $PM_{10}$ NAAQS is 150 ug/m³.

NA = Not applicable. Critical Design Value is not applicable when the Design Value (including motor vehicle growth) is at or below 98 μg/m³.

— AQS only includes data from the first two quarters of 2013.

Five-Year Average Design Values

The second criterion for the LMP option is that the average 24-hour $PM_{10}$ design value, based on the most recent 5 years of data at all monitors in the area, be at or below 98 ug/m³ with no violations at any monitor in the nonattainment area. If an area cannot meet this test, it may still qualify for the LMP option using the site-specific critical design value (CDV), which is an indicator of the likelihood of future violations at that site.[7]

For the Payson area, because there is only one monitoring site and given the frequency of monitoring (one day every six days), the ''average design value'' is simply the highest $PM_{10}$ concentration measured at the Payson Wells Site over the most recent five calendar years. The Second Ten-Year LMP indicates that the design value for the Payson area based on data from 2006 through 2010 is 66 μg/m³, which is well below the criterion of 98 ug/m³. Based on more recent ambient monitoring data (2008 through 2012) than was available when the Second Ten-Year LMP was being prepared, the design value is 44 μg/m³, which is also well below the criterion of 98 μg/m³. Thus, the second criterion has been met.

Motor Vehicle Regional Emissions Analysis Test

The third criterion is referred to as the motor vehicle regional emissions analysis test. The methodology for this test is found in attachment B to the LMP policy. As a general matter, for this test, the monitor-based design value is increased based on the expected growth in motor vehicle traffic over the maintenance period. Specifically, the motor vehicle fraction of the design value concentration is assumed to equal the motor vehicle fraction of the overall emissions inventory. The motor vehicle fraction of the design value is then multiplied by the projected percentage increase in vehicle miles traveled (VMT) in the area over the next 10 years. The product of this calculation is then added to the monitor-based design value and compared with the applicable criterion, in this case, 98 μg/m³. If the sum is less than or equal to 98 μg/m³, then the criterion is met.

In the Second Ten-Year LMP for the Payson area, ADEQ used the updated inventory (see Table 2, below) to estimate that motor vehicles contribute approximately 62%, or 41 μg/m³, to the design value of 66 μg/m³ (based on 2006–2010 data). ADEQ then multiplied 41 μg/m³ by 0.24, based on the projected 10-year increase in traffic in the Payson area of approximately 24% to estimate the traffic growth increment of approximately 10 μg/m³. ADEQ then concluded that motor vehicle regional emissions analysis test was met because the sum of the motor vehicle growth increment (approximately 10 μg/m³) and the design value (66 μg/m³), or 76 μg/m³, is less than the criterion of 98 μg/m³. We have reviewed ADEQ's methods and calculations and find them acceptable. If the calculation were to be re-done using the most recent monitored 5-year design value (which is 44 μg/m³ based on 2008–2012 data), the test would be met by an even larger margin. Therefore, the third criterion for eligibility for the LMP option for the second 10-year period of maintenance is met.

Conclusion and Maintenance Demonstration

For the reasons given above, we conclude that the Payson area remains eligible for the LMP option. Under the LMP policy, the maintenance demonstration requirement under CAA section 175A is considered satisfied for areas meeting the LMP criteria discussed above, and because the Payson area continues to meet the LMP criteria, we conclude that no further demonstration of maintenance through the second 10-year period is necessary.

*C. Is the updated emission inventory acceptable?*

For LMPs, a State's submission should include an emissions inventory which can be used to demonstrate maintenance of the NAAQS by meeting the LMP eligibility criteria. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the LMP applicability requirements.

As part of the Second Ten-Year LMP, ADEQ prepared a $PM_{10}$ emissions inventory for 2008 for the Payson area. Year 2008 is one of the years within the five-year period over which the $PM_{10}$ design value for the Payson area is calculated and thus is an acceptable inventory year. Based on ADEQ's estimates, shown in Table 2 below, on-road motor vehicles (including fugitive dust from entrainment of $PM_{10}$ from travel on paved and unpaved roads, as well as exhaust, brake and tire wear) contribute approximately 62% to the total $PM_{10}$ inventory, while construction and residential wood combustion contribute 32.6% and 4.6%, respectively. Industrial sources contribute less than 1%.

[7] See the LMP Policy, pp. 2–3 and attachment A to the LMP Policy.

TABLE 2—PAYSON $PM_{10}$ MAINTENANCE AREA—2008 EMISSION INVENTORY

| Source category | Payson Maintenance Area $PM_{10}$ emissions (tons per day) | Percent of total $PM_{10}$ emissions in Payson Maintenance Area |
|---|---|---|
| Unpaved Roads—Fugitive Dust | 0.29 | 30.4 |
| Paved Roads—Fugitive Dust | 0.27 | 28.8 |
| Paved and Unpaved Roads—Exhaust, Tire, and Brake Wear | 0.03 | 2.8 |
| Subtotal—Motor Vehicles | 0.59 | 62.0 |
| Construction | 0.31 | 32.6 |
| Residential Wood Combustion | 0.04 | 4.6 |
| Industrial Sources | 0.01 | 0.8 |
| Total | 0.92 | 100.0 |

**Source:** Derived from Table 3.5 (page 17) of the Second Ten-Year LMP for the Payson area.

Section 3.2 of the Second Ten-Year LMP describes the methodology used to develop the attainment inventory. The emission inventory categories are the same as those identified in the First Ten-Year LMP, and the methodology used to determine the contribution of sources is largely the same as was used in the First Ten-Year LMP. ADEQ updated emissions for each source category based on current emissions models, vehicle activity, population and employment figures.

For instance, ADEQ updated motor vehicle emissions estimates using EPA's National Mobile Inventory Model (NMIM) to develop emission factors for motor vehicle exhaust, tire, and brake wear for motor vehicles. NMIM uses EPA's MOBILE6.2 emission factors, which were the most current factors at the time that development of the Second Ten-Year LMP was initiated. ADEQ used updated emission factors in EPA's *Compilation of Air Pollutant Emission Factors* (AP–42) to estimate $PM_{10}$ entrained by vehicle movement over paved roads. ADEQ also updated the non-mobile source inventory with 2008 National Emission Inventory (NEI) data, primarily by adjusting county-specific estimates by the ratio of population in the Payson area to the population in Gila County. For point sources in Payson, ADEQ used industrial source data collected in an annual survey of permitted facilities.

ADEQ compared the 2008 emissions estimates with those prepared for the First Ten-Year LMP and provided a sufficient explanation for those source categories that differed significantly in the updated inventory relative to the previous inventory. ADEQ explained that the emissions from residential wood combustion decreased significantly due to the implementation of EPA's New Source Performance Standards (NSPS) for residential wood heaters (40 CFR part 60, subpart AAA) and that the emissions associated with fugitive dust from vehicle travel over unpaved roads increased significantly due to higher estimates of unpaved road VMT in the Payson air quality planning area.[8]

During the period in which the draft Second Ten-Year LMP was being developed, EPA replaced MOBILE6.2 with a new motor vehicle emission factor model, known as Motor Vehicle Emission Simulator (or ''MOVES''). In response to EPA's request to consider the impact on the inventory due to the release of MOVES, ADEQ re-calculated the motor vehicle emissions estimates using MOVES and projected a 0.006 ton per day increase in emissions from motor vehicle exhaust, brake and tire wear relative to the estimate made using MOBILE6.2.[9] This incremental increase corresponds to a 0.1 $\mu g/m^3$ increase in the estimate of the motor vehicle fraction of the design value. As such, use of MOVES, rather MOBILE6.2, has no effect on the continued eligibility of the Payson area for the LMP option.

Based on our review of the methods, models, and assumptions used by ADEQ to develop the $PM_{10}$ emission inventory, we find that the Second Ten-Year LMP for the Payson area includes a comprehensive inventory of $PM_{10}$ emissions and conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan, in this case, a subsequent LMP, under CAA section 175A(b).

*D. Are the plan control measures permanent and enforceable?*

As discussed in our 2002 approval of the First Ten-Year LMP for the Payson area, the measures that brought the area into attainment are permanent and enforceable (67 FR 43013, at 43018, June 26, 2002). The Second Ten-Year LMP relies on the same control measures to continue to maintain the NAAQS for $PM_{10}$ through 2022. The Second Ten-Year LMP has not revised these measures, which continue to be permanent and enforceable.

*E. Has the State committed to continue to operate an appropriate $PM_{10}$ air quality monitoring network?*

ADEQ currently operates a single $PM_{10}$ monitoring site in the Payson area. Operating a single monitor in this area is consistent with EPA's monitoring requirements. ADEQ has committed to continue to operate an appropriate $PM_{10}$ air quality monitoring network to verify the attainment status of the Payson area in accordance with 40 CFR part 58. See section 6.0 of the Second Ten-Year LMP. In October 2013, ADEQ requested EPA approval of relocation of the Payson monitor to another location on the same property.[10] EPA has not taken action yet on this request.

*F. Does the plan continue to meet the CAA provisions for contingency measures?*

Section 175A(d) states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may

[8] The First Ten-Year LMP relied on annual estimate of unpaved road VMT of 75,000 (see page 23 of the First Ten-Year LMP) whereas the corresponding estimate in the Second Ten-Year LMP is approximately 510,000 miles (see page 16 of the Second Ten-Year LMP).

[9] See letter from Eric C. Massey, Director, Air Quality Division, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region IX, dated February 10, 2014.

[10] See letter from Eric C. Massey, Director, Air Quality Division, ADEQ, to Deborah Jordan, Air Division Director, EPA Region IX, dated October 1, 2013.

occur after redesignation of the area to attainment. These contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and the State should ensure that the contingency measures are adopted as soon as possible once they are triggered by a specific event. The contingency plan should identify the measure to be adopted, and provide a schedule and procedure for adoption and implementation of the measure if they are required.

In the Second Ten-Year LMP for the Payson area, ADEQ has, in most respects, carried forward the contingency plan adopted in the First Ten-Year LMP, which was approved by EPA in 2002. First, ADEQ commits to continue to submit annual reports to EPA that will include calculation of the Payson area $PM_{10}$ design value to verify continued attainment and continued eligibility for the LMP option. See section 6.0 of the Second Ten-Year LMP for the Payson area.

ADEQ made a similar commitment in the approved First Ten-Year LMP and has met its commitment through submittal of annual reports to EPA. We note that the annual reports did not address the motor vehicle regional emissions analysis test although we acknowledge that doing so would not have changed the status of the Payson area with respect to eligibility for the LMP option. ADEQ should address the motor vehicle regional emissions analysis test in annual reports submitted to EPA under the Second Ten-Year LMP.

Second, as part of the contingency plan, ADEQ has committed to determine whether or not $PM_{10}$ NAAQS violations have been recorded within six months of the close of each calendar year, and to review and determine the appropriate contingency measure(s) by the end of the same calendar year. See section 5.3 of the Second Ten-Year LMP. Table 3 below lists the measures that ADEQ commits to consider for implementation in the event of a violation of the $PM_{10}$ NAAQS or in the event the annual recalculation of the area's design value exceeds the applicable LMP option criteria. The cause of the violation or exceedance of the LMP option criteria will help to determine the appropriate contingency measure(s) to be implemented.

TABLE 3—PAYSON AREA CONTINGENCY MEASURES

| Contingency measures | Implementing entity |
|---|---|
| If any $PM_{10}$ industrial source operating within the maintenance area is found to be contributing to monitored readings above the LMP allowable limits, ADEQ will review existing air quality permit(s) to identify additional $PM_{10}$ control measures which may be needed. If the $PM_{10}$ source does not have a permit, the permitting authority will determine if an air quality permit and $PM_{10}$ controls are needed. | ADEQ. |
| If wood burning sources are found to be contributing to monitored readings above the LMP allowable limits, ADEQ will review State regulations and programs to determine appropriate action. | ADEQ. |
| Pave or stabilize public unpaved roads, vacant lots, or unpaved parking lots located in the $PM_{10}$ maintenance area subject to limits of statutory authority. | Town of Payson and/or Gila County. |
| Continuation of Smoke Management Plan—State and Federal land managers conducting prescribed burning must register with ADEQ for proposed burning activities under Arizona Administrative Code title 18, chapter 2, article 15 (Forest & Range Management Burns). ADEQ maintains the ability to deny permission for burning on certain high risk days (dependent on meteorological conditions) and may increase outreach and enforcement resources. | U.S. Forest Service, U.S. Bureau of Land Management, Arizona State Land Department, ADEQ. |

Finally, the State has committed to implement the selected contingency measure(s) within one year of determining that a $PM_{10}$ NAAQS violation has occurred. Lastly, should the levels rise above the limits qualifying the area for the LMP option despite implementation of contingency measures, ADEQ has committed to develop and submit a full maintenance plan to EPA. We conclude that these measures and commitments meet the requirements of CAA section 175A(d).

*G. How are transportation and general conformity requirements being met?*

Section 176(c) of the Act requires that all Federal actions conform to an applicable SIP. Conformity is defined in section 176(c) of the Act as conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

EPA has established criteria and procedures for Federal agencies to follow in determining conformity of their actions. EPA's rule governing transportation plans, programs, and projects approved or funded by the Federal Highway Administration or Federal Transit Administration is referred to as the ''transportation conformity'' rule (*see* 40 CFR part 93, subpart A), and EPA's rule governing all other types of Federal agency actions is referred to as the ''general conformity'' rule (*see* 40 CFR part 93, subpart B).

The transportation conformity rule and the general conformity rule apply to nonattainment and maintenance areas. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budget for the area. While EPA's LMP option does not exempt an area from the need to affirm conformity, the LMP policy explains that the area may demonstrate conformity without submitting an emissions budget.

Transportation Conformity

Under the LMP option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is

unreasonable to expect that qualifying areas would experience so much growth in that period that a violation of the NAAQS would result. Therefore, in areas with approved LMPs, Federal actions requiring conformity determinations under the transportation conformity rule are considered to satisfy the ''budget test'' required in 40 CFR 93.118.

While areas with maintenance plans approved under the LMP option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR Part 93, Subpart A. Thus, the applicable metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that:

(a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

(b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;

(c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;

(d) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

(e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

(f) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

(g) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

Upon approval of the Second Ten-Year LMP for the Payson area, the State (in this case, the Arizona Department of Transportation) will continue to be exempt from performing a regional emissions analysis, but must continue to meet project-level analyses as well as the transportation conformity criteria mentioned above.

We posted notice of receipt of the Second Ten-Year LMP for the Payson area on EPA's adequacy review Web site on January 23, 2014, and took comments until February 24, 2014. See EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. Once there, click on the link for the Payson LMP. Because LMPs do not contain budgets, the adequacy review period for this maintenance plan serves to allow the public to comment on whether the LMP option is appropriate for this area. We did not receive any comments during the adequacy review comment period.

Lastly, if during the course of the second ten-year maintenance period, the LMP criteria are no longer satisfied and a full maintenance plan must be developed to meet CAA requirements, the approval of the LMP would remain applicable for transportation conformity purposes only until the full maintenance plan is submitted and EPA has found its motor vehicle emissions budgets adequate for conformity purposes under 40 CFR 93.118.

General Conformity

For Federal actions that are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from a federal action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources (''emissions budgets'') is one made by the State and local air quality agencies. Such emissions budgets are unlike and not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels.

ADEQ has chosen not to include any specific emissions allocations for Federal projects that would be subject to the provisions of general conformity in the Second Ten-Year LMP for the Payson area. Similar to transportation conformity, in LMP areas, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in 40 CFR 93.158(a)(5)(i)(A) of the rule, for the same reasons that the budgets are essentially considered to be unlimited.

## IV. Final Action

Under CAA section 110(k), EPA is approving the second ten-year limited maintenance plan for the Payson air quality planning area for the $PM_{10}$ NAAQS that was submitted by ADEQ on January 23, 2012 as a revision to the Arizona SIP. EPA is approving this plan based on the conclusion that the plan adequately provides for continued maintenance of the $PM_{10}$ NAAQS in the Payson area through 2022 and thereby meets the requirements for subsequent maintenance plans under section 175A of the Act. The effect of this action is to make the State's continuing commitments with respect to maintenance of the $PM_{10}$ NAAQS in the Payson area federally enforceable for another ten years. These commitments include continued monitoring; continued implementation of control measures that were responsible for bringing the area into attainment; preparation and submittal of annual reports; consideration and implementation of contingency measures, if necessary; and submittal of a full maintenance plan if contingency measures fail to provide the necessary remedy.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the Payson Second Ten-Year LMP if relevant adverse comments are filed. This rule will be effective May 19, 2014, without further notice unless relevant adverse comments are received by April 18, 2014. If we receive such comments, this direct final action will be withdrawn before the effective date. All public comments received will then be addressed in a subsequent final rule based on the proposed action. We will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective May 19, 2014.

## V. 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 a State plan 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 19, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 5, 2014.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52 [AMENDED]

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

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

## Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(159) to read as follows:

**§ 52.120 Identification of plan.**

* * * * *

(c) * * *

(159) The following plan was submitted on January 23, 2012 by the Governor's Designee.

(i) [Reserved]

(ii) *Additional Materials.*

(A) Arizona Department of Environmental Quality

(*1*) *Final Update of the Limited Maintenance Plan for the Payson* $PM_{10}$ *Maintenance Area (December 2011),* adopted by the Arizona Department of Environmental Quality on January 23, 2012.

[FR Doc. 2014–05669 Filed 3–18–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2012–0796; FRL–9907–25]**

## Ipconazole; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of ipconazole in or on vegetable, legume, group 6. Chemtura Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective March 19, 2014. Objections and requests for hearings must be received on or before May 19, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0796, 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.*

**FOR FURTHER INFORMATION CONTACT:** Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington,

DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0796 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 19, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0796, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of December 19, 2012 (77 FR 75082) (FRL–9372–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8076) by Chemtura Corporation, 199 Benson Rd., Middlebury, CT 06749. The petition requested that 40 CFR 180.646 be amended by establishing tolerances for residues of the fungicide ipconazole (2-[(4-chlorophenyl)methyl]-5-(1-methylethyl)-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol) in or on legume vegetables, succulent or dried, crop group 6 at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by Chemtura Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for ipconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with ipconazole follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Ipconazole has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It causes low to mild irritation to the eyes and skin; it is not a dermal sensitizer. Ipconazole may cause local, portal-of-entry irritation via all routes following repeated exposure. Systemic effects that were noted in dogs, mice, rabbits and/or rats following exposure to ipconazole were generally limited to decreased body weight, body weight gain, and food consumption; and liver and kidney effects. Developmental effects were observed only at the maternally-toxic dose. No consistent evidence of neurotoxicity was observed following acute, subchronic, or chronic dosing in multiple species in the available ipconazole database and the triazole fungicides as a group typically show either no evidence of neurotoxicity or neurotoxicity at doses significantly higher than the regulatory points of departure. Ipconazole is classified as not likely to be a human carcinogen and there is no concern for mutagenicity. Specific information on the studies received and the nature of the adverse effects caused by ipconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Revised Ipconazole Human Health Risk Assessment of the Proposed Use on

Legume Vegetables (Crop Group 6)'' on page 23 in docket ID number EPA–HQ–OPP–2012–0796.

*B. Toxicological Points of Departure (POD)/Levels of Concern (LOC)*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological POD and LOC to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors (SF) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for ipconazole used for human risk assessment is shown in the following Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR IPCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

| Exposure/scenario | Point of departure and uncertainty/safety factors | RfD, PAD, LOC for risk assessment | Study and toxicological effects |
|---|---|---|---|
| Acute dietary (females 13–50 years of age). | NOAEL = 10 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.1 mg/kg/day<br>aPAD = 0.1 mg/kg/day | Co-critical developmental toxicity studies in rats and rabbits.<br>$LOAEL_{rats}$ = 30 mg/kg/day, based on increased visceral and skeletal variations.<br>$LOAEL_{rabbits}$ = 50 mg/kg/day, based on increased incidence of skeletal variations and malformations. |
| Acute dietary (general population including infants and children). | No appropriate endpoint attributable to a single dose of ipconazole was identified for this population. | | |
| Chronic dietary (all populations) | NOAEL= 1.5 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.015 mg/kg/day<br>cPAD = 0.015 mg/kg/day | Chronic toxicity study in dogs.<br>LOAEL = 5 mg/kg/day, based on skin reddening (both sexes) and decreased body weight gain in females. |
| Cancer (oral, dermal, inhalation). | No evidence of carcinogenicity. Classification: Not likely to be a human carcinogen, based on two adequate rodent carcinogenicity studies. | | |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies).

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to ipconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing ipconazole tolerances in 40 CFR 180.646. EPA assessed dietary exposures from ipconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No acute endpoint attributable to a single exposure and relevant for the general population was identified in the toxicity database for ipconazole. A developmental endpoint suitable for acute assessment was identified; therefore an acute dietary assessment was performed only for women of child-bearing age (females 13–49 years old). In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database, Version 3.16 (DEEM–FCID), which uses food consumption information from the U.S. Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Surveys of What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance level residues and 100% crop treated.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 National Health and Nutrition Examination Surveys of What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used tolerance level residues and assumed 100% crop treated.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that ipconazole is not a likely carcinogen. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for ipconazole. Tolerance level residues and/or 100% crop treated were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for ipconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/

transport characteristics of ipconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), and Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) of ipconazole for acute exposures are estimated to be 0.173 parts per billion (ppb) for surface water and 1.01 ppb for ground water.

The EDWCs of ipconazole for chronic exposures for non-cancer assessments are estimated to be 0.105 ppb for surface water and 0.822 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1.01 ppb was used to assess the contribution from drinking water. For chronic dietary risk assessment, the water concentration of value 0.822 ppb was used to assess the contribution from drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ipconazole is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Ipconazole is a member of the conazole class of pesticides. Although conazoles act similarly in plants by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events, including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no conclusive data to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Ipconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and three triazole conjugates (triazolylalanine, triazolylacetic acid, and triazolylpyrivic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including ipconazole, U.S. EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10x FQPA SF for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497.

An updated dietary exposure and risk analysis for the common triazole metabolites 1,2,4-triazole (T), triazolylalanine (TA), triazolylacetic acid (TAA), and triazolylpyruvic acid (TP) was conducted completed in May 2013, in association with a registration request for several other triazole fungicides. That analysis concluded that risk estimates were below the Agency's level of concern for all population groups. After inclusion of ipconazole uses covered by this action, aggregate risk estimates for T, TA, TAA, and TP for all durations of exposure and for all population subgroups are below the Agency's level of concern. This updated assessment may be found on *http://www.regulations.gov* by searching for the following title and docket number: ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address The New Section 3 Registrations For Use of Prothioconazole on Bushberry Crop Subgroup 13–07B, Low Growing Berry, Except Strawberry, Crop Subgroup 13–07H, and Cucurbit Vegetables Crop Group 9; Use of Flutriafol on Coffee; and Ipconazole on Crop Group 6'' (located in docket ID number EPA–HQ–OPP–2012–0876).

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10x, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Offspring effects only occurred in the presence of maternal toxicity and were not considered more severe than the parental effects. Therefore, EPA concluded that there is no quantitative or qualitative evidence of increased susceptibility to rat or rabbit fetuses exposed *in utero* and/or post-natally to ipconazole.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for ipconazole is complete. The Agency waived the requirement for an Immunotoxicity study for ipconazole as there is minimal evidence that ipconazole targets the immune system, nor are the conazoles of a chemical class expected to have an adverse effect on the immune system. An increase in leukocytes was observed in females at 78.3 mg/kg/day in the 28-day inhalation study, however this was not of concern because it was the only evidence of potential immunotoxicity in

the entire ipconazole database, the effect occurred at a dose 10-fold higher than the dose (7.8 mg/kg/day) that caused portal-of-entry effects in the same study, and the effect occurred at a dose much greater than the PODs chosen for risk assessment. The overall weight of evidence suggests that ipconazole does not target the immune system.

ii. There is no consistent evidence of neurotoxicity in the available databases. Clinical signs suggestive of neurotoxicity were observed in the *in vivo* mammalian cytogenetics study; however, they were seen at relatively high doses, which far exceed the anticipated dietary exposure, and no other signs were observed in any of the other studies, including studies with neurotoxicity assessments. Based on the lack of evidence in the database, EPA waived the requirement for the acute neurotoxicity study. Also, the subchronic neurotoxicity study requirement is considered to be satisfied by the neurotoxicity assessments performed in both the rat subchronic and chronic toxicity/carcinogenicity studies in which no signs of neurotoxicity were observed. This is consistent with what is known about the triazole fungicides as a class, which typically show either no evidence of neurotoxicity or neurotoxicity at doses significantly higher than the regulatory points of departure. Therefore, ipconazole is not considered to be neurotoxic and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that ipconazole results in increased susceptibility following *in utero* exposure for rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study, and there are no residual uncertainties with respect to pre- or postnatal exposure.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to ipconazole in drinking water. These assessments will not underestimate the exposure and risks posed by ipconazole.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to ipconazole will occupy <1% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to ipconazole from food and water will utilize <1% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. There are no residential uses for ipconazole.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short-term adverse effect was identified; however, ipconazole is not registered for any use patterns that would result in short-term residential exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for ipconazole.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, ipconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for ipconazole.

5. *Aggregate cancer risk for U.S. population.* Ipconazole has been classified as not likely to be carcinogenic, and is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to ipconazole residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) (AC/3020)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for ipconazole on vegetable, legume, group 6.

### *C. Revisions to Petitioned-for Tolerances*

The petitioner requested a tolerance for residues of ipconazole in or on ''legume vegetables succulent or dried, crop group 6''. EPA is correcting the commodity term and establishing a tolerance for ''vegetable, legume, group 6''.

## V. Conclusion

Therefore, tolerances are established for residues of ipconazole (2-[(4-chlorophenyl)methyl]-5-(1-

methylethyl)-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol) in or on vegetable, legume, group 6 at 0.01 ppm. EPA is revising the tolerance expression for ipconazole to clarify that metabolites and degradates are covered by the tolerances and to specify how compliance with the tolerances is to be measured. The existing tolerances for pea and bean, dried shelled, except soybean, subgroup 6C at 0.01 ppm and soybean, seed at 0.01 ppm will be removed from paragraph (a) of § 180.646 as these tolerances are encompassed within vegetable, legume, group 6.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 12, 2014.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.646:

■ a. Revise the introductory text in paragraph (a).

■ b. Remove ''Pea and bean, dried shelled, except soybean, subgroup 6C'', and ''Soybean, seed'' from the table in paragraph (a).

■ c. Add alphabetically ''Vegetable, legume, group 6'' to the table in paragraph (a).

The amendments read as follows:

### § 180.646 Ipconazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of ipconazole, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only ipconazole (2-[(4-chlorophenyl)methyl]-5-(1-methylethyl)-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol) in or on the commodity.

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Vegetable, legume, group 6 | 0.01 |

* * * * *

[FR Doc. 2014–06059 Filed 3–18–14; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 45 CFR Part 156

**[CMS–9943–IFC]**

**RIN 0938–AS28**

## Patient Protection and Affordable Care Act; Third Party Payment of Qualified Health Plan Premiums

**AGENCY:** Centers for Medicare and Medicaid Services, Department of Health and Human Services (HHS).

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule requires issuers of qualified health plans (QHPs), including stand-alone dental plans (SADPs), to accept premium and cost-sharing payments made on behalf of enrollees by the Ryan White HIV/AIDS Program, other Federal and State government programs that provide premium and cost sharing support for specific individuals, and Indian tribes, tribal organizations, and urban Indian organizations.

**DATES:** *Effective Date:* This interim final rule is effective on March 14, 2014.

*Comment date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 13, 2014.

**ADDRESSES:** In commenting, please refer to file code CMS–9943–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit

comments in one of four ways (please choose only one of the ways listed).

1. Electronically. You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. By regular mail. You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9943–IFC, P.O. Box 8016, Baltimore, MD 21244–8016. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9943–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. By hand or courier. Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850. If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Leigha Basini, (301) 492–4380 for questions related to this rule.

**SUPPLEMENTARY INFORMATION:** Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments. Comments received timely also will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

## I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the ''Affordable Care Act.''

As of October 1, 2013, for coverage that started as early as January 1, 2014, qualified individuals and qualified employers have been able to enroll in QHPs and SADPs—private health and dental insurance that has been certified as meeting certain standards—through competitive Marketplaces called ''Exchanges'' or ''health insurance Marketplaces.'' The word ''Exchanges'' refers to both State Exchanges, also called State-based Exchanges (SBEs), and Federally-facilitated Exchanges (FFEs). In this final rule, when we refer to ''FFEs,'' we are also referring to State Partnership Exchanges. CMS has implemented Affordable Care Act provisions through regulations codified in title 45 of the Code of Federal Regulations (CFR), and, unless otherwise indicated, all regulatory references herein are to that title.

In the individual market Exchanges, premium and cost-sharing payment arrangements are generally managed directly between QHP and SADP issuers and enrollees. For those QHP enrollees eligible for advance payments of the premium tax credit and cost-sharing reductions, the federal government makes applicable payments to QHP issuers.

CMS has issued ''Frequently Asked Questions'' or ''FAQs'' with respect to premium and cost-sharing payments made by third parties on behalf of QHP enrollees. In a FAQ issued on November 4, 2013 (the November FAQ),[1] CMS encouraged QHP issuers not to accept third-party payments from hospitals, other healthcare providers, and other commercial entities due to concerns that such practices could skew the insurance risk pool and create an unlevel field in the Exchanges.

On February 7, 2014, CMS issued additional FAQs (the February FAQs) clarifying that the November FAQ was not intended to discourage QHP issuers from accepting third party premium and cost-sharing payments made by Indian tribes, tribal organizations, and urban Indian organizations, as well as by state and federal government programs (such as the Ryan White HIV/AIDS Program).[2] CMS affirmatively encouraged QHP issuers to accept such payments given that federal or state law or policy specifically envisions third party payment of premium and cost-sharing amounts by these entities.

Specifically, the Ryan White HIV/AIDS Program plays a critical role in ensuring that people living with HIV in the United States have access to life-saving antiretroviral medications, serving over 550,000 people living with HIV annually. Medication access is provided through both payment for medication and payment of insurance premiums and cost-sharing when such assistance is cost effective for the Ryan White HIV/AIDS Program. The Ryan White HIV/AIDS Program has been authorized to provide insurance assistance for low-income people living with HIV since 1990 under section 2615 of the Public Health Service Act, as added by the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act (Pub. L. 101–381, title II, § 201, Aug. 18, 1990). Section 2616(f) of the Public Health Service Act provides authority for states to use AIDS Drug Assistance Program grant funds to purchase or maintain health insurance or plans when the coverage includes the relevant therapeutics and the cost of such coverage does not exceed the costs of otherwise providing them directly. This provision was added in 2000 as subsection (e) by the Ryan White CARE Act Amendments of 2000 (Pub. L. 106–

[1] *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/third-party-qa-11-04-2013.pdf.*

[2] *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/third-party-payments-of-premiums-for-qualified-health-plans-in-the-marketplaces-2-7-14.pdf.*

345, § 204(b)) and was subsequently renumbered to (f) in 2006. Through Policy Notices 99–01, 7–05, and most recently 13–04, 13–05 and 13–06, the Health Resources and Services Administration HIV/AIDS Bureau has provided guidance to grantees reiterating that the funds awarded under the Parts A, B, and C of the Ryan White HIV/AIDS Program may be used to support a health insurance premium and costs-sharing assistance program as a core medical service for eligible low-income people living with HIV when it is cost-effective for the program. Ryan White HIV/AIDS Program funds are payer-of-last-resort funds and may be used for public or private health insurance premiums, as well as cost-sharing (for example, deductibles, copayments, and coinsurance). In fiscal year 2013, the Ryan White HIV/AIDS Program AIDS Drug Assistance Program paid $397,245,305 in premium assistance to issuers on behalf of program beneficiaries. As of June 2013, the Ryan White HIV/AIDS Program AIDS Drug Assistance Program provided premium assistance for 52,568 people living with HIV. These premium assistance expenditures were paid directly to issuers.

In addition, section 1312 of the Affordable Care Act, section 402 of the Indian Health Care Improvement Act, and 45 CFR 155.240(b) provides that Exchanges may permit Indian tribes, tribal organizations, and urban Indian organizations to pay aggregated QHP premiums on behalf of qualified individuals, subject to terms and conditions determined by the Exchange. In the past, a number of tribes have provided premium assistance to tribal members eligible to enroll in the Medicare Part D program. These arrangements have resulted in an increase in the number of tribal members enrolled in Medicare Part D. Building from that experience, these same arrangements are being replicated by tribes and tribal organizations in providing premium assistance to qualified individuals for QHPs in the Exchanges. Under these arrangements tribes aggregate premium payments to issuers and reduce their administrative costs.

## II. Provisions of the Interim Final Rule

We have become aware that, despite related policy clarifications, some QHP issuers continue to reject payments of premium and cost sharing by the Ryan White HIV/AIDS Program. In particular, this QHP issuer practice is causing access problems for persons who rely on the Ryan White HIV/AIDS Program for assistance. Accordingly, we are promulgating a new requirement at § 156.1250 that QHP and SADPs must accept third party premium and cost sharing payments from the Ryan White HIV/AIDS Program.

To ensure that individuals reliant on programs similar to the Ryan White HIV/AIDS Program are not being adversely affected by QHPs' and SADPs' refusal to accept third party premium and cost-sharing payments, we are including within the new requirement that QHPs and SADPs must accept third party premium and cost-sharing payments from the following other entities in addition to the Ryan White HIV/AIDS Program: Indian tribes, tribal organizations, and urban Indian organizations; and state and federal government programs. This standard applies to all individual market QHPs and SADPs, regardless of whether they are offered through an FFE, an SBE, or outside of the Exchanges.

Our new standard does not prevent QHPs and SADPs from having contractual prohibitions on accepting payments of premium and cost sharing from third party payers other than those specified in this interim final regulation. In particular, as stated in our November FAQ, we remain concerned that third party payments of premium and cost sharing provided by hospitals, other healthcare providers, and other commercial entities could skew the insurance risk pool and create an unlevel competitive field in the insurance market. We continue to discourage such third party payments of premiums and cost sharing, and we encourage QHPs and SADPs to reject these payments.

We are also amending § 156.805 to ensure that new § 156.1250 can be enforced. Enforcement of FFE issuer standards and requirements is governed by § 156.800 through § 156.810. In the August 30, 2013 Program Integrity Rule (78 FR 54070, 54143), we established the bases for HHS to impose civil money penalties (CMPs) against QHP issuers for violations of certain standards applicable to issuers offering QHPs in the FFEs. In § 156.805(a), we set forth the grounds for imposing CMPs. Since the publication of that final rule, we noted that certain paragraphs under these sections should be clarified and, in some instances, technical corrections are necessary, to properly reflect when these enforcement remedies will apply. These clarifications and corrections are specifically necessary to reflect that these enforcement remedies will apply to violations of § 156.1250. For example, under paragraph (1), the word ''including'' was inadvertently omitted from the phrase ''misconduct in the Federally-facilitated Exchange or substantial non-compliance with the Exchange standards applicable to issuers offering QHPs in the Federally-facilitated Exchange [including] under subparts C through G of part 153 of this subchapter.'' This same phrase also inadvertently referenced specific subparts within part 153, including subparts C and D, which contain standards and requirements for States in relation to the reinsurance and risk adjustment programs. We are therefore amending paragraph (1) so that it correctly provides that § 156.805 targets violations of issuer standards and requirements of part 153 that are applicable to issuers. We are also making changes to clarify that substantial non-compliance with any Exchange standard or requirement applicable to issuers in the FFE is grounds for imposing CMPs and that reference to specific subparts of part 153 was not intended to be limit the types of QHP standards and requirements for which enforcement under this section would be available. We are further amending paragraph (1) to add an explicit reference to part 156, to clarify that substantial non-compliance with the Exchange standards applicable to issuers offering QHPs in the FFEs under part 156, including new § 156.1250, may be a basis for the imposition of CMPs under § 156.805.

Accordingly, failure to comply with the requirement to accept third party payments in accordance with § 156.1250 could constitute a violation of § 156.805(a)(1) as ''substantial non-compliance with [an] Exchange standard[].'' Depending upon the circumstances, a QHP or SADP issuer's failure to comply with § 156.1250 could also fall under § 156.805(a)(4) as a ''practice that would reasonably be expected to have the effect of denying or discouraging enrollment into a QHP offered by the issuer (except as permitted by this part) by qualified individuals whose medical condition or history indicates the potential for a future need for significant medical services or items.'' Under § 156.805(c), an issuer offering a QHP or SADP through an FFE may be subject to a maximum penalty of $100 per day, per each individual who is adversely affected by the QHP or SADP issuer's non-compliance.

Issuers offering QHPs or SADPs through an SBE or outside of the Exchanges would be subject to any penalties that the SBE or the state has established to address issuer non-compliance with general QHP and SADP standards and requirements under part 156, Subpart M, in addition

to any other SBE-specific or state-specific enforcement.

Qualified individuals in states with an FFE or SPE who are affected by a QHP's or SADP's violation of this new requirement, either because they are unable to effectuate coverage because an issuer will not accept the third party premium payments which the individual needs to be able to make a complete payment of the premium within the open enrollment time frame, or because they lose coverage due to the issuer's refusal to accept the required third-party premium or cost-sharing payments from entities described in 45 CFR 156.1250, may be eligible for an FFE special enrollment period (SEP) in accordance with § 155.420(d)(9) and a certificate of exemption under § 155.605(g)(1)(iii). CMS will issue additional guidance in the near future clarifying the specific criteria for obtaining the SEP or hardship exemption. We also encourage all SBEs to grant an SEP and certificate of exemption under these circumstances.

We continue to consider making additional regulatory changes to QHP and SADP issuer responsibilities to ensure that QHPs and SADPs accept third party premium and cost-sharing payments from the Ryan White HIV/AIDS Program, other state and federal government programs that support premium and cost sharing, and Indian tribes, tribal organizations, and urban Indian organizations.

## III. Waiver of Proposed Rulemaking and Waiver of Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule before publishing a final rule that responds to comments and sets forth final regulations that generally take effect at least thirty days later. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. CMS for good cause, under 5 U.S.C. 553(b)(B), finds that the notice-and-comment requirements of the Administrative Procedure Act (APA) would be impracticable and contrary to the public interest given that a delay in coverage for people who rely on one of the third parties noted in the regulation to pay their premiums could result in worsening medical conditions. Further, there is risk that one or more issuers may discontinue the existing QHP coverage of HIV/AIDS patients who are dependent on the Ryan White HIV/AIDS Program for premium assistance in the near future. Based on these same concerns, we find for good cause, under 5 U.S.C. 553(b)(B), that the notice-and-comment requirements of the APA would be impracticable and contrary to the public interest with respect the clarification and correction of our enforcement authority at § 156.805(a). For the reasons outlined above, the public interest requires that new § 156.1250 be immediately enforced.

Additionally, section 553(d) of the APA (5 U.S.C. 553(d)) ordinarily requires that a final rule be effective not less than 30 days from the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if otherwise provided by an agency for good cause found and published with the rule. For the reasons set forth below, we also find good cause to waive the 30-day delay in effective date as unnecessary, impracticable and contrary to the public interest.

In this case, given the short timeframe under which this change must be implemented, delaying the promulgation and effectiveness of this rule would mean that some people who are eligible to enroll in a QHP but rely on the Ryan White HIV/AIDs Program, tribes and tribal organizations, or other state or federal programs to contribute to the cost of the premium, either in whole or in part, would not be able to effectuate their coverage. It could also mean that the third parties noted in the regulation would not be able to assist people who are already enrolled but do not have the funds to continue to pay their premiums, which could lead to coverage terminations for failure to pay premiums. Both of these scenarios could result in people's medical conditions worsening and an increase in uncompensated care. We consider this policy to be a benefit to consumers. Recent studies have demonstrated that individuals with HIV on antiretroviral medications who achieve viral load suppression are less likely to transmit HIV to others.[3] Ensuring access to care and treatment services support the achievement of viral suppression, and, therefore, has a significant public health impact on HIV incidence as well.

The full scope of this issue and the need for § 156.1250 was not known until after open enrollment began on October 1, 2013. We assumed that issuers of QHPs and SADPs would continue to accept these payments as these issuers had done prior to the availability of coverage through the Exchanges, and thus the impact of such third party payments was built into their baselines.[4] Indeed, we expect that the vast majority of issuers already have been accepting these payments with this understanding. Similarly, with respect to the clarification of and correction to our enforcement authority at § 156.1280(a), waiver of the 30-day-delay in effective date is necessary to enable CMS to take immediate enforcement action as necessary against those issuers who continue to refuse to accept the referenced third party payments. As described above, these actions could interfere with the ability of at-risk individuals to effectuate or maintain coverage.

Given the unusual circumstances and for the reasons outlined above, CMS finds good cause under the APA, 5 U.S.C. 553(b)(B) and (d)(3), to waive notice-and-comment rulemaking and to waive the delay in effective date and proceed directly with the issuance of a final rule with an immediate effective date.

## IV. Collection of Information Requirements

This rule does not impose new or alter existing information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

## V. Regulatory Impact Analysis

We have examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

[3] Myron S. Cohen, Marybeth McCauley, and Theresa R. Gamble, HIV treatment as prevention and HPTN 052, Current Opinion in HIV and AIDS, Volume 7(2), p. 99–105 (March 2012); William Miller, Kimberly Powers, M. Kumi Smith, Myron S Cohen, Community viral load as a measure for assessment of HIV treatment as prevention, Lancet Infect Dis 13:459–64 (2013).

[4] For this reason, we do not believe that the new requirement in § 156.1250 will have a material effect on the risk pools of QHP and SADP issuers. Further, starting in 2014, the risk adjustment, transitional reinsurance, and risk corridor programs offer new protection to issuers in the individual market against adverse selection.

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). It is CMS's belief that this final rule does not reach this economic threshold and thus is not considered a major rule.

This rule requires individual market QHPs and SADPs to accept premium payments made by certain third parties. The rule would also require individual market QHPs and SADPs to accept cost-sharing payments made by these third parties. We do not believe these actions would impose any significant new costs on issuers because we assume that the vast majority of issuers already accept such payments.

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. Agencies must analyze options for regulatory relief for small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' CMS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 percent. For the purposes of the regulatory flexibility analysis, we expect issuers offering individual market QHPs and SADPs operating in an FFE, an SBE or outside of the exchange to be affected by this proposed rule.

As discussed in Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements under the Patient Protection and Affordable Care Act; Interim Final Rule,[5] few, if any, issuers are small enough to fall below the size thresholds for small business established by the SBA. In that rule, we used a data set created from 2009 NAIC Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, CMS used total Accident and Health earned premiums as a proxy for annual receipts. We estimated that there are 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage.[6] However, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

Therefore, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities.

*B. Unfunded Mandates*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule (and subsequent final rule) that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of costs, mainly those ''federal mandate'' costs resulting from: (1) Imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

This final rule requires QHPs and SADPs to accept premiums paid by certain third parties. Many issuers currently have systems in place to accept premium payments as part of the normal course of business, including payments made by people other than the insured. For example, the Ryan White HIV/AIDS Program AIDS Drug Assistance Program provided $397,245,000 in premium assistance to issuers on behalf of Ryan White HIV/AIDS Program participants during fiscal year 2013. In June 2013, the Ryan White HIV/AIDS Program AIDS Drug Assistance Program provided premium assistance for 52,568 people living with HIV. These premium assistance expenditures were paid directly to issuers. Accordingly, this rule generally should not impose any significant new administrative costs on issuers. CMS has concluded that this rule does not place any mandates on state, local, or tribal governments or the private sector that exceed the threshold for 2014.

*C. Federalism*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has federalism implications. This rule does not impose any costs on state or local governments not otherwise imposed by already-finalized provisions of the regulations implementing the Affordable Care Act.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy-making discretion of the states, CMS has engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the NAIC, and consulting with State insurance officials on an individual basis. We believe that this rule does not impose substantial direct costs on state and local governments, preempt state law, or otherwise have federalism implications. We are amending the operational requirements for QHPs and SADPs. Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department of Health and Human Services certifies that CMS has complied with the requirements of Executive Order 13132 for the attached proposed regulation in a meaningful and timely manner.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

*D. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the

[5] Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements under the Patient Protection and Affordable Care Act; Interim Final Rule, 75 **Federal Register** 74864, 74918–20 (December 1, 2010) (codified at 45 CFR Part 158).

[6] According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers). For more information, see ''Table of Size Standards Matched to North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov.*

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. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

**List of Subjects in 45 CFR Part 156**

Administrative appeals, Administrative practice and procedure, Administration and calculation of advance payments of premium tax credit, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Cost-sharing reductions, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Payment and collections reports, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR part 156 as set forth below:

## PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 1. The authority citation for part 156 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, Pub. L. 111–148, 124 Stat. 119 42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 2. Section 156.805 is amended by revising paragraph (a)(1) to read as follows:

**§ 156.805 Bases and process for imposing civil money penalties in Federally-facilitated Exchanges.**

(a) * * *

(1) Misconduct in the Federally-facilitated Exchange or substantial non-compliance with the Exchange standards and requirements applicable to issuers offering QHPs in the Federally-facilitated Exchange, including but not limited to issuer standards and requirements under parts 153 and 156 of this subchapter;

* * * * *

■ 3. Section 156.1250 is added to read as follows:

**§ 156.1250 Acceptance of certain third party payments.**

Issuers offering individual market QHPs, including stand-alone dental plans, must accept premium and cost-sharing payments from the following third-party entities on behalf of plan enrollees:

(a) Ryan White HIV/AIDS Program under title XXVI of the Public Health Service Act;

(b) Indian tribes, tribal organizations or urban Indian organizations; and

(c) State and Federal Government programs.

Dated: March 11, 2014.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: March 12, 2014.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2014–06031 Filed 3–14–14; 4:15 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 383 and 390

**[Docket No. FMCSA–2012–0156]**

**RIN 2126–AB70; Formerly RIN 2126–AB53**

### Gross Combination Weight Rating; Definition

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) by revising the definition of ''gross combination weight rating'' (or GCWR) to clarify the applicability of the Agency's safety regulations for single-unit trucks (vehicles other than truck tractors) when they are towing trailers, and the GCWR information is not included on the vehicle manufacturer's certification label.

**DATES:** The final rule is effective April 18, 2014.

**ADDRESSES:** For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* at any time and insert ''FMCSA–2012–0156'' in the ''Keyword'' box, and then click ''Search.'' The docket is also available by going to the ground floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Siekmann, Office of Enforcement, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 493–0442 or via email at *Garry.Siekmann@dot.gov.* Office hours are from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. If you have questions on viewing material in the docket, contact Docket Operations (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*Purpose and Summary of the Major Provisions*

This rule clarifies the applicability and improves the enforceability of the safety regulations by redefining GCWR. This revised definition provides a uniform means for motor carriers, drivers, and enforcement officials to determine whether a driver operating a combination vehicle is subject to the commercial driver's license (CDL) requirements (49 CFR Part 383) or the general safety requirements (49 CFR Part 390). This rule also responds to a petition filed by the Commercial Vehicle Safety Alliance (CVSA) on February 14, 2008, seeking changes in the definition of ''gross combination weight rating.''

*Benefits and Costs*

This action only clarifies the definition of GCWR to eliminate confusion surrounding the language of the previous definition and long-standing enforcement practices. The rule provides clear criteria for determining the applicability of the FMCSRs when the GCWR is the deciding factor. Costs, if any, will be borne by motor carriers and drivers who had previously concluded, based on the wording of the GCWR definition, that their operations were not subject to certain safety regulations, but now will comply with the applicable rules.

## II. Legal Basis for the Rulemaking

This final rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (MCSA or 1984 Act), both of which provide broad discretion to the Secretary of Transportation (Secretary) in implementing their provisions. In addition, this rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [49 U.S.C. Chapter 313].

The 1935 Act provides that the Secretary may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier [49 U.S.C. 31502(b)(1)], and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation [49 U.S.C. 31502(b)(2)]. The amendments made by this rule are based on the Secretary's authority to regulate the safety and standards of equipment of for-hire and private carriers.

The 1984 Act gives the Secretary concurrent authority to regulate drivers, motor carriers, and vehicle equipment [49 U.S.C. 31136(a)]. Section 31136(a) requires the Secretary to publish regulations on commercial motor vehicle (CMV) safety. Specifically, the Act sets forth minimum safety standards to ensure that (1) CMVs are maintained, equipped, loaded, and operated safely [49 U.S.C. 31136(a)(1)]; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely [49 U.S.C. 31136(a)(2)]; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely [49 U.S.C. 31136(a)(3)]; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators [49 U.S.C. 31136(a)(4)]. Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, i.e., that the regulations ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 [Transportation of Hazardous Material] or chapter 313 [Commercial Motor Vehicle Operators] of this title'' [49 U.S.C. 31136(a)(5)].

This action clarifies the applicability and improves the enforceability of GCWR within the safety regulations. This gives motor carriers and the drivers they employ a practical means of determining whether any combination vehicle is subject to the Federal safety regulations concerning licensing, equipment, and inspection, repair and maintenance, consistent with 49 U.S.C. 31136(a)(1). This action will also result in consistent application of the rules by Federal and State enforcement personnel. This rule does not address the responsibilities or physical condition of drivers covered by 49 U.S.C. 31136(a)(2) and (3), respectively, and deals with 49 U.S.C. 31136(a)(4) only to the extent that a vehicle operated in accordance with the safety regulations is less likely to have a deleterious effect on the physical condition of a driver. FMCSA has considered the costs and benefits of the rule, as required by 49 U.S.C. 31136(c)(2)(A) and 31502(d).

With regard to 49 U.S.C. 31136(a)(5), this rule does not change the long-standing prohibitions and penalties against operating a CMV, as defined either in 49 CFR 383.5 or 49 CFR 390.5, without complying with applicable requirements. Among other things, motor carriers are currently prohibited from using unqualified CMV drivers; and unqualified drivers are currently prohibited from operating CMVs. This rule has only a limited effect on the risk of driver coercion by motor carriers, shippers, receivers, or transportation intermediaries. This action enables drivers and the entities that are in a position to coerce drivers into violating the FMCSRs to determine with a greater degree of certainty whether particular vehicle configurations meet either of the CMV definitions under 49 CFR Parts 383 or 390. This will help eliminate differences of opinion between drivers and other entities regarding the applicability of the rules and previously published guidance. As a result, entities in a position to coerce drivers to operate in violation of the CDL requirements (49 CFR Part 383) or certain safety regulations (49 CFR Parts 390–399) will either ensure each of their decisions is consistent with the rules or be unable to avoid the fact that any decision inconsistent with the rules represents an act of coercion. The Agency expects the rule to reduce the risk of driver coercion.

The CMVSA required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for the issuance of CDLs by the States and the information to be contained on each license (49 U.S.C. 31305, 31308). This action provides a uniform means for motor carriers, drivers, and enforcement officials to determine whether a driver operating a combination vehicle is subject to the CDL requirements.

## III. Background

The term CMV is defined differently in 49 CFR 383.5 and 390.5, as required by the underlying statutes (the CMVSA and the MCSA, respectively). Both regulatory definitions, however, like their statutory equivalents, depend (in part) on the GVWR or GVW, whichever is greater, to determine whether a single-unit vehicle is a CMV for purposes of the relevant safety regulations. Although neither the MCSA nor the CMVSA referred explicitly to combination vehicles, Congress clearly did not intend to exempt this huge population of vehicles from the safety regulations applicable to CMVs. FMCSA, therefore adapted the statutory language used for single-unit vehicles to combination vehicles, substituting GCWR or GCW, whichever is greater, for GVWR or GVW.[1] Because GVW and GCW are used in the regulatory definitions of CMV in parts 383 and 390, enforcement officials and motor carriers may determine the applicability of the safety regulations simply by weighing the vehicles. In many situations, however, scales are not readily available. That deficiency increases the importance of correctly determining the GCWR by alternate means to decide whether a combination is a CMV. Drivers, carriers and enforcement officials should not have to search manufacturers' product literature for the GCWR or FMCSA's Web site or commercial publications for regulatory guidance. Instead, they should be able to rely on codified regulations that are accessible and easy to understand and implement.

On February 14, 2008, the CVSA petitioned FMCSA, among other things, to change the definition of GCWR which it said was ''proving problematic for inspectors and industry when determining what is considered to be a CMV and when a CDL is required.'' The Agency granted the petition on August 18, 2011, and agreed to initiate a rulemaking. On August 27, 2012, FMCSA published a direct final rule (DFR) pursuant to 49 CFR 389.39 to amend the definition of GCWR (77 FR 51706). The FMCSA received several adverse comments, resulting in the withdrawal of the DFR (77 FR 65497, Oct. 29, 2012) and the subsequent re-publication of the proposed GCWR

[1] *Gross combination weight rating* (GCWR) is defined in 49 CFR 383.5 and 390.5.

*Gross vehicle weight rating* (GVWR) is defined in 49 CFR 383.5 and 390.5.

definition as a notice of proposed rulemaking (NPRM) (78 FR 26575, May 7, 2013, under Regulatory Identification Number 2126–AB53). The adverse comments to the DFR were addressed in the NPRM.

## IV. Discussion of Comments

FMCSA received 12 comments in response to the NPRM. The commenters included the CVSA, the New York State Department of Motor Vehicles (NY DMV), the Truck and Engine Manufacturers Association (EMA), SAE International (SAE) [formerly the Society of Automotive Engineers], NTEA (formerly National Truck Equipment Association), the Truck Trailer Manufacturers Association (TTMA), and a few individuals. Five commenters favored the proposed rule, six opposed it (for different reasons), and one comment did not directly address the proposed change.

*Comments Supporting NPRM*

A statement in support of the proposed rule was provided by ''R.S.'' in an on-line comment: ''It's about time. New definition is finally correct and makes it easy for people to understand.'' Dave Schofield expressed the same view.

The NY DMV said that ''[t]he proposed rule clarifies the applicability of the safety regulations and provides a uniform means for motor carriers, drivers, and Federal and State enforcement officials to determine whether a driver operating a combination vehicle that does not display a GCWR, is subject to the CDL requirements. New York State extends our support to this new proposed definition.''

CVSA said that it ''strongly supports FMCSA's proposal to change the definition of 'Gross Combination Weight Rating' in Parts 383 and 390 to read'' as indicated in the NPRM.

EMA commented that ''we support FMCSA's proposed new GCWR definition. . . . [M]ost trucks and tractors do not include a GCWR on the FMVSS certification label, and when they do it could be misleading. Accordingly, we agree with FMCSA that the GCWR specified on the certification label of a truck or truck tractor should only serve as an optional element of the GCWR definition. The better method for determining the GCWR of a combination vehicle is to add the GVWRs or GVWs of the power unit and the towed unit(s).''

*FMCSA Response:* The Agency agrees with their comments.

*Comments Opposing NPRM*

Michael J. Schmidt, Sr., objected to ''any change'' in the current regulations. ''The bottom line is that enforcement must have scales. The current regulation is sufficient as it reads.''

NTEA ''supports the FMCSA's goal . . . and offers further clarification. . . . By creating a definition that starts out by referencing a GCWR figure on the certification label, we believe many enforcement officials will assume that the certification labels require such a figure. Even today, it is not uncommon for an enforcement official to assume the GCWR is required. When they see a label without a GCWR figure they will, incorrectly, cite the driver/owner for a false or incorrect label. . . . The definition as proposed, while well intentioned, is likely to exacerbate this situation.'' NTEA therefore recommended that GCWR be defined simply as the GVWR of the towing unit added to the GVWR of the trailer(s).

''SAE and the SAE Tow Vehicle Trailer Rating Committee (SAE TVTRC) do not believe [the proposed definition] is an appropriate methodology for determining GCWR. . . . GCWR covers performance requirements for systems including (but not limited to) power unit engine, transmission, drive axle, powertrain cooling, steering, suspension, brake and structural systems, and as such, can only properly be determined by the power unit manufacturer. Summing the GVW or GVWR values of power unit and towed unit(s) may result in an actual Gross Combination Weight condition but it will not necessarily produce a Gross Combination Weight RATING, as the resultant may not even be close to the value tested and validated by the power unit manufacturer. . . . Law enforcement difficulties in determining GCWR for means of enforcement should not lead to a change in definition of GCWR, but rather a change in how the value is communicated and displayed.''

John F. Nowak raised several objections to the proposed GCWR definition. Although the first element of the definition is the ''value specified by the manufacturer of the power unit if displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration,'' he pointed out that few manufacturers actually list the GCWR on the certification label. Mr. Nowak also noted that the second element of the definition allows other ''means [to] be used to determine GCWR information even if the [manufacturer's GCWR] information is posted on the certification label.'' He believes that a ''revision to the definition of GCWR by FMCSA must also include a revision to the NHTSA certification label to require the display of GCWR on said label.'' In his view, ''[d]isplay of the GCWR on the certification label would solve the problem . . .''

Mr. Nowak's second major contention is that the proposed definition could promote unsafe practices. Combining the GVWR of the towing vehicle and GVWR of the trailer could produce a GCWR higher than that specified by the manufacturer of the towing vehicle (though rarely listed on the NHTSA certification label). As a result, the definition might reduce safety because ''the driver and or carrier may assume that the [Agency's GCWR] number . . . is an accurate and safe rating for the towing vehicle. . . . It is imperative that the FMCSA drop the sum of the GVWRs definition and work with NHTSA to post the GCWR rating on the certification to promote safe operation of combination vehicles.''

TTMA and John Gregg argued that the GCWR of a vehicle should be the sum of its gross axle weight ratings (GAWR). TTMA, like Mr. Nowak, was ''concerned that the proposed rule . . . might allow for situations where combination vehicles are dangerously overloaded. . . . [W]e suggest that the rule for GCWR . . . be amended to show that in no case shall the GCWR exceed the sum of the [GAWRs] of the power unit and the towed unit(s).'' Mr. Gregg pointed out that ''[t]he GCW is not the sum of the GVWs when the connections between the vehicles transfer vertical loads, such as 5th wheel hitches. With load bearing couplers a portion of the GVW of one vehicle is included in the GVW of the other. The GCW is actually the sum of the Gross Axle Weights (GAW) of the vehicles in the combination.''

*FMCSA Response:* The recommendation to require manufacturers to list the GCWR on the certification label is beyond the scope of this rulemaking. The Agency notes that a manufacturer's GCWR label would not resolve certain situations, e.g., when the driver of a combination vehicle with a GCWR below the relevant jurisdictional threshold (10,001 or 26,001 pounds) appears to have loaded the vehicle and trailer beyond those values. This question could be decided only by the use of scales. The manufacturer's GCWR alone could not, and should not, exempt the driver of an overloaded vehicle from the applicable regulatory requirements.

While the FMCSA agrees that the display of the GCWR information on the

certification label would be helpful, the Agency does not have the authority to adopt that requirement. That long-term approach would leave the enforcement community and the industry without a practical solution for the short term. The NPRM focused on a more immediate approach with minimal economic impact to the industry.

FMCSA does not share SAE's apparent belief that vehicle operators would load their combinations to a GCWR allowed by this rule that might exceed the GCWR established by the manufacturer of the towing vehicle. The Truck & Engine Manufacturers Association also expressed no concern over that possibility.

A GCWR established by adding two (or more) GVWRs should not be construed as the Agency's promotion of excessive and unsafe weights for that combination. State and Federal laws set strict limits on the axle weight and gross weight of combination vehicles, irrespective of their GCWR. This rule does not affect those limits; it simply ensures that drivers and carriers who combine towing vehicles and trailers of sufficient GVWR—in various ways that FMCSA cannot control—are not excused from compliance with the appropriate safety regulations. As for NTEA's concern that the first element of the definition—listing of the manufacturer's GCWR on the NHTSA certification label—would lead enforcement officers to assume that such a listing is required, we believe that the normal training procedures of the Agency and its State partners would reduce any such misunderstanding to insignificance. NTEA supported the second element of the definition, which defines GCWR as (among other things) the combined GVWRs of the towing unit and trailer.

Mr. Nowak pointed out that the second method of determining GCWR could be used ''even if the [GCWR] information is posted on the certification label.'' The Agency agrees that even if the manufacturer's GCWR were displayed on the NHTSA label, the proposed definition would use the sum of the GVWRs as the GCWR if that sum exceeded the value specified by the manufacturer.

FMCSA declines to give further consideration to the proposal to treat GCWR as the sum of the GAWRs. While a comment that constitutes a ''logical outgrowth'' of an NPRM may be considered ''within the scope'' of a rulemaking under the requirements of the Administrative Procedure Act, adoption of a far-reaching alternative regulatory scheme, like that proposed by TTMA and Mr. Gregg, without prior discussion would test the limits of those doctrines.

*Removal of Regulatory Guidance*

The NPRM proposed to remove FMCSA's regulatory guidance on certain issues because the revised GCWR definition would make it unnecessary. The Agency is withdrawing questions 3 and 4 to 49 CFR 383.5 (62 FR 16369, 16395, April 4, 1997) and questions 3, 4, and 11 to 49 CFR 390.5 (62 FR 16369, 16406–16407, April 4, 1997). The text of the guidance to those questions was included in the NPRM at 78 FR 26578–26579.

## V. Discussion of Regulatory Changes in Sections 383.5 and 390.5

Both the previous and revised definitions of GCWR include two alternative methods of determining GCWR, but the revised definition is simpler to understand and apply.

The first method of establishing GCWR is changed from ''the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle'' to ''[a] value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration.'' The revised definition is simpler and easier to understand.

The alternative method of establishing GCWR applies irrespective of the manufacturer's GCWR. The previous definition said that ''[i]n the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.'' As explained above, this meant that scales were typically needed to determine GCWR. The revised definition is ''[t]he sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed units, or any combination thereof, that produces the highest value.'' This method retains the option of weighing combination vehicles, but also adopts an enforcement practice that was widely, though informally, used over the years, namely adding the GVWR of the truck and trailer. While this method may occasionally produce a GCWR higher than that specified by the manufacturer, it reflects what motor carriers and drivers are actually doing. Many vehicle operators load up to (and sometimes beyond) the maximum their towing units and (especially) trailers can handle, which they generally assume to be the combined GVWRs. When these combined GVWRs exceed the weight thresholds for the safety regulations (10,001 pounds) or the CDL regulations (26,001 pounds), the operators will be held accountable. The new definition also allows enforcement officers to combine actual weights with GVWRs and to treat the heaviest combined value as the GCWR.

Finally, the revised definition provides that GCWR will be the value produced by either the first or second method, whichever gives the higher value. An ''exception'' has been added to the definition. Some heavy-duty pickup trucks and lighter-duty straight trucks have GCWRs set by the manufacturer that are well above the 10,001-pound threshold for application of the general safety regulations; others have manufacturer-established GCWRs that are above the 26,001-pound threshold required for a CDL. Yet many of these vehicles are often operated without trailers, or with very small trailers. In the absence of evidence that these vehicles are being used in ''combination,'' that is, to tow trailers, FMCSA believes it would be unfair (and for reasons of safety unnecessary) to use the manufacturer's GCWR to decide whether the driver and carrier must comply with the safety or CDL regulations. The final GCWR definition therefore includes an exception: ''The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.''

## VI. Regulatory Analyses

*E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)*

FMCSA has determined that this rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 2, 1979). While this rule may affect some carriers and drivers not currently subject to some or all of the FMCSRs, the Agency is unable to quantify this effect. This rulemaking only clarifies the definition of GCWR to eliminate confusion surrounding the language of the existing definition and acknowledges long-standing enforcement practices. The rule will provide clear criteria for determining the applicability of the FMCSRs when the GCWR is the deciding factor. The cost, if any, will be borne by motor carriers and drivers who had previously

concluded, based on the wording of the definition of GCWR, that their operations were not subject to certain safety regulations, but who now will comply with the applicable rules. The Agency believes this population to be negligible, and that the costs of the rule would not begin to approach the $100 million annual threshold for economic significance. The Agency does not expect the final rule to generate substantial congressional or public interest. No member of congress commented on the NPRM and the public response was limited. This rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), this final rule is not expected to have a significant economic impact on a substantial number of small entities because it would only clarify existing rules by providing clear objective criteria for determining the applicability of the FMCSRs when the GCWR is not included on the FMVSS certification label required by NHTSA. Consequently, I certify that the final rule would not have a significant economic impact on a substantial number of small entities.

*Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding the effects of this final rule. While the Agency believes that the rule will adversely affect few, if any, small businesses, organizations, or governmental jurisdictions, any questions concerning its provisions or options for compliance should be directed to, the FMCSA personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of the final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

*Unfunded Mandates Reform Act of 1995*

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $151 million (which is the 2012 inflation-adjusted value of the 1995 threshold of $100 million) or more in any 1 year.

*E.O. 13132 (Federalism)*

A rule has Federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this final rule under E.O. 13132 and determined that it does not have Federalism implications.

*E.O. 12988 (Civil Justice Reform)*

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

*E.O. 13045 (Protection of Children)*

FMCSA analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this final rule does not create an environmental risk to health or safety that may disproportionately affect children.

*E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it does not effect a taking of private property or otherwise have taking implications.

*Privacy Impact Assessment*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this final rule will not result in a new or revised Privacy Act System of Records for FMCSA.

*E.O. 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. There is no new information collection requirement associated with this final rule.

*National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(b) of Appendix 2. The CE under paragraph 6(b) addresses rulemakings that make editorial or other minor amendments to existing FMCSA regulations. A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this final rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental

Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

*E.O. 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

*E.O. 13175 (Indian Tribal Governments)*

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

*Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies.

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

**List of Subjects**

*49 CFR Part 383*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, Motor carriers.

*49 CFR Part 390*

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated above, FMCSA amends title 49, Code of Federal Regulations, chapter III, subchapter B, parts 383 and 390, as follows:

## PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 2. Amend § 383.5 by revising the definition of ''Gross combination weight rating'' to read as follows:

**§ 383.5 Definitions.**

* * * * *

*Gross combination weight rating (GCWR)* is the greater of:

(1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

* * * * *

## PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 3. The authority citation for part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, and 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; secs. 212, 217, and 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; sections 32101(d) and 34934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 4. Amend § 390.5 by revising the definition of ''Gross combination weight rating'' to read as follows:

**§ 390.5 Definitions.**

* * * * *

*Gross combination weight rating (GCWR)* is the greater of:

(1) A value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration, or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value. Exception: The GCWR of the power unit will not be used to define a commercial motor vehicle when the power unit is not towing another vehicle.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87 on: March 6, 2014.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2014–05502 Filed 3–18–14; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–HQ–IA–2014–0010; 92220–1113–0000; ABC Code: C6]**

**RIN 1018–BA47**

## Endangered and Threatened Wildlife and Plants; Reinstatement of the Regulation That Excludes U.S. Captive-Bred Scimitar-Horned Oryx, Addax, and Dama Gazelle From Certain Prohibitions

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

**ACTION:** Final rule.

**SUMMARY:** The Consolidated Appropriations Act of 2014 (Pub. L. 113–76) was enacted into law on January 17, 2014. A provision of that act directs the Secretary of the Interior, within 60 days of enactment, to reissue the final rule published on September 2, 2005, that authorized certain otherwise prohibited activities with U.S. captive-bred specimens of scimitar-horned oryx, addax, and dama gazelle where the purpose of the activity is associated with the management of the species in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries. This rule implements that directive.

**DATES:** This action is effective March 19, 2014.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov.* You may obtain information about permits or other authorizations to carry out otherwise prohibited activities by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703–358–2104 or (toll free) 800–358–2104; facsimile: 703–358–2281; email: *managementauthority@fws.gov;* Web site: *http://www.fws.gov/international/.*

**FOR FURTHER INFORMATION CONTACT:** Robert R. Gabel, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–2093; fax 703–358–2280. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 2, 2005 (70 FR 52319), the Service determined that the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) were endangered in their entirety under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). According to this rule, the numbers of these species of antelopes in the wild had declined drastically in the deserts of North Africa over the past 50 years. The causes of decline were habitat loss (desertification, permanent human settlement, and competition with domestic livestock), regional military activity, and uncontrolled killing. With the exception of reintroduced animals, no sightings of the scimitar-horned oryx had been reported since the late 1980s. Remnant populations of the addax might still exist in remote desert areas, but probably fewer than 600 occur in the wild. Only small numbers of dama gazelle were estimated to occur in the species' historical range, with recent estimates of fewer than 700 in the wild. Captive-breeding programs operated by zoos and private ranches have increased the number of these antelopes, while genetically managing their herds and providing founder stock necessary for reintroduction. At that time, the Sahelo-Saharan Interest Group (SSIG) of the United Nations Environment Program estimated that 4,000–5,000 scimitar-horned oryx, 1,500 addax, and 750 dama gazelle are in captivity worldwide, many of which were held in the United States. Based on a 2010 census of its members, the Exotic Wildlife Association (EWA) estimated that 11,032 scimitar-horned oryx, 5,112 addax, and 894 dama gazelle were on EWA member ranches.

On September 2, 2005 (the same date that we listed the three antelopes as endangered), the Service also published a new regulation (70 FR 52310) at 50 CFR 17.21(h) to govern certain activities with U.S. captive-bred animals of these three species. For live antelopes, including embryos and gametes, and sport-hunted trophies of these three species, the regulation authorized certain otherwise prohibited activities where the purpose of the activity is associated with the management of the species in a manner that contributed to increasing or sustaining captive numbers or to potential reintroduction to range countries. These activities include take; export or re-import; delivery, receipt, carrying, transport or shipment in interstate or foreign commerce in the course of a commercial activity; and sale or offer for sale in interstate or foreign commerce. For additional information on that final rule, please see the preamble to the rule published on September 2, 2005 (70 FR 52310).

The promulgation of this regulation was challenged in two consolidated cases in the United States District Court for the District of Columbia (see *Friends of Animals, et al.,* v. *Ken Salazar, Secretary of the Interior* and *Rebecca Ann Cary, et al.,* v. *Rowan Gould, Acting Director, Fish and Wildlife Service, et al.,* 626 F. Supp. 2d 102 (D.D.C. 2009)). The District Court found that the rule violated section 10(c) of the ESA by not providing the public an opportunity to comment on activities being carried out with these three antelope species. On June 22, 2009, the Court remanded the rule to the Service for action consistent with its opinion.

To comply with the Court's order, the Service published a proposed rule on July 7, 2011 (76 FR 39804) and a final rule on January 5, 2012 (77 FR 431) that removed the regulation at 50 CFR 17.21(h), thus eliminating the exclusion for U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle from certain prohibitions under the ESA. Under that final rule, any person who wished to conduct an otherwise prohibited activity with U.S. captive-bred scimitar-horned oryx, addax, or dama gazelle would need to qualify for an exemption or obtain authorization for such activity under the ESA. For additional information on that final rule, please see the preamble to the rule published on January 5, 2012 (77 FR 431).

On January 17, 2014, the Consolidated Appropriations Act of 2014 (Pub. L. 113–76) was enacted. Division G, Title I, Section 127 of that act directs the Secretary of the Interior, within 60 days of the date of enactment, to reissue the final rule published on September 2, 2005 (70 FR 52310), without regard to any other provision of statute or regulation that applies to issuance of such rule. This rule implements that directive.

## Effects of the Rule

With this rule, persons who wish to engage in the specified otherwise prohibited activities that meet the criteria for enhancement of the propagation or survival of these species may do so without obtaining an individual ESA permit. This rule does not authorize any activity for any specimen of the three species from the wild. It also does not affect provisions relating to importation or possession and other acts with unlawfully taken wildlife. In addition, this rule applies only to specimens that are captive-bred in the United States. Any person who wishes to engage in any act that is prohibited under the ESA with a specimen that has not been captive-bred in the United States or from a facility that does not meet the criteria of this rule will continue to need to obtain an individual permit under the ESA. The issuance or denial of such permits is decided on a case-by-case basis and only after all required findings have been made.

Each of the three antelope species are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This rule does not affect the CITES requirements for these species. Therefore, any import into or export from the United States of specimens of these species would not be authorized until all CITES requirements have been met.

For additional information on this final rule, please see the preamble to the rule published on September 2, 2005 (70 FR 52310).

## Effective Date

This rule is effective upon publication in the **Federal Register**. Section 127 of Division G, Title I, of Pub. L. 113–76, directs us to reissue, within 60 days of enactment, the final rule published on September 2, 2005. That section also expressly provides that such reissuance is not subject to any other statute or regulation that applies to such a rule. Accordingly, in reissuing this rule, any

delay in the effective date otherwise required by statute, regulation, or Executive Order does not apply.

**Required Determinations**

This rulemaking implements Section 127 of Division G, Title I, of Pub. L. 113–76, which expressly provides that the reissuance of this rule is not subject to any other provision of statute or regulation that applies to issuance of such a rule. Accordingly, in reissuing this rule, the Service has not made and is not required to make determinations otherwise required by statute, regulation, or Executive Order, such as those previously made when issuing the final rule published on September 2, 2005 (70 FR 52310, 52317–52318) (publishing a new regulation at 50 CFR 17.21(h)) or those previously made when issuing the final rule published on January 5, 2012 (77 FR 431, 436–437) (removing the regulation at 50 CFR 17.21(h)).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as 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 § 17.21 by adding paragraph (h) to read as follows:

**§ 17.21 Prohibitions.**

* * * * *

(h) *U.S. captive-bred scimitar-horned oryx, addax, and dama gazelle.* Notwithstanding paragraphs (b), (c), (e), and (f) of this section, any person subject to the jurisdiction of the United States may take; export or re-import; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce live wildlife, including embryos and gametes, and sport-hunted trophies of scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) provided:

(1) The purpose of such activity is associated with the management or transfer of live wildlife, including embryos and gametes, or sport hunting in a manner that contributes to increasing or sustaining captive numbers or to potential reintroduction to range countries;

(2) The specimen was captive-bred, in accordance with § 17.3, within the United States;

(3) All live specimens of that species held by the captive-breeding operation are managed in a manner that prevents hybridization of the species or subspecies;

(4) All live specimens of that species held by the captive-breeding operation are managed in a manner that maintains genetic diversity;

(5) Any export of or foreign commerce in a specimen meets the requirements of paragraph (g)(4) of this section, as well as parts 13, 14, and 23 of this chapter;

(6) Each specimen to be re-imported is uniquely identified by a tattoo or other means that is reported on the documentation required under paragraph (h)(5) of this section; and

(7) Each person claiming the benefit of the exception of this paragraph (h) must maintain accurate written records of activities, including births, deaths, and transfers of specimens, and make those records accessible to Service officials for inspection at reasonable hours set forth in §§ 13.46 and 13.47 of this chapter.

(8) The sport-hunted trophy consists of raw or tanned parts, such as bones, hair, head, hide, hooves, horns, meat, skull, rug, taxidermied head, shoulder, or full body mount, of a specimen that was taken by the hunter during a sport hunt for personal use. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items for commercial purposes.

Dated: March 10, 2014.

**Michael Bean,**

*Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2014–05954 Filed 3–17–14; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 121009528–2729–02]**

**RIN 0648–XD156**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2014 commercial summer flounder quota to the Commonwealth of Virginia and the State of New Jersey. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

**DATES:** Effective March 14, 2014, through December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Management Specialist, 978–281–9224.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.102.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 14,820 lb (6,726 kg) of its 2014 commercial quota to Virginia. This transfer was prompted by summer flounder landings of the F/V *Helen Louise,* a North Carolina vessel that was granted safe harbor in Virginia due to running aground and encountering thick

ice on February 1, 2014, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. North Carolina has agreed to transfer 4,833 lb (2,192 kg) of its 2014 commercial quota to New Jersey. This transfer was prompted by summer flounder landings of the F/V *Adrianna,* a North Carolina vessel that was granted safe harbor in New Jersey due to mechanical failure on February 12, 2014, thereby requiring a quota transfer to account for the increase in New Jersey's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder commercial quotas for calendar year 2014 are: North Carolina, 2,973,379 lb (1,348,702 kg); Virginia, 2,575,400 lb (1,168,182 kg); and New Jersey 1,909,656 lb (866,205 kg).

## Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: March 14, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–06076 Filed 3–14–14; 4:15 pm]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 130919816–4205–02]**

**RIN 0648–BD70**

## Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2014 Annual Catch Limits

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

**ACTION:** Final rule.

**SUMMARY:** This action adjusts 2014 annual catch limits (ACLs) for the Atlantic herring (herring) fishery to account for catch overages and underharvest in 2012. NMFS is decreasing three of the four ACLs and increasing one ACL. This results in a reduction to the overall catch available to the herring fleet.

**DATES:** Effective March 19, 2014, through December 31, 2014.

**ADDRESSES:** Copies of supporting documents, 2013–2015 Specifications/Framework 2 and Amendment 4 to the Herring Fishery Management Plan (FMP), are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. These documents are also accessible via the Internet at *http://www.nero.nmfs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Travis Ford, Fishery Policy Analyst, 978–281–9233.

**SUPPLEMENTARY INFORMATION:**

## Background

The herring harvest in the United States is managed under the Herring FMP developed by the New England Fishery Management Council (Council), and implemented by NMFS. The Herring FMP divides the stock-wide herring ACL among three management areas, one of which has two sub-areas. It divides Area 1 (located in the Gulf of Maine (GOM)) into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The Herring FMP considers the herring stock complex to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component.

Amendment 4 to the Herring FMP (76 FR 11373, March 2, 2011) revised the Herring FMP to address ACL and accountability measure (AM) requirements. As a way to account for ACL overages in the herring fishery, Amendment 4 established an AM that provided for overage deductions in the year immediately following the catch overage determination. If the catch of herring exceeds any ACL or sub-ACL, NMFS will subsequently deduct the overage from the corresponding ACL/sub-ACL in the year following the catch overage determination. Amendment 4 also specified that NMFS will announce overage deductions in the **Federal Register** prior to the start of the fishing year, if possible.

We published a final rule for Framework 2 and the 2013–15 specifications on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allows for the carryover of unharvested catch in the year immediately following the catch determination. Up to 10 percent of each sub-ACL may be carried over, provided catch did not exceed the stock-wide ACL. The carryover provision allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the stock-wide ACL. The management area sub-ACLs established in the specifications for 2014 are: 31,200 mt for Area 1A, 4,600 mt for Area 1B, 30,000 mt for Area 2, and 42,000 mt for Area 3 (Table 1).

## Final Adjustment to the 2014 Annual Catch Limits

In accordance with regulations at § 648.201(a)(3), this action adjusts 2014 sub-ACLs for the herring fishery to account for catch overages and underharvest in 2012. We completed the 2012 catch determination in August 2013, so we will apply the adjustments for any overharvests or carryover in 2012 to the 2014 sub-ACLs. In 2012, the herring fleet underharvested the stockwide ACL of 90,683 mt by 122 mt. However, the fleet overharvested the sub-ACLs in herring management Areas 1B (overage of 1,584 mt); 2 (overage of 336 mt); and 3 (overage of 1,325 mt). In 2014, after deducting each 2012 overage, the sub-ACL for Area 1B will be 3,016 mt (4,600 mt reduced by 1,584 mt); the sub-ACL for Area 2 will be 29,664 mt (30,000 mt reduced by 336); and the sub-ACL for Area 3 will be 40,675 mt (42,000 mt reduced by 1,325 mt) (Table 1).

The herring fleet underharvested the sub-ACL from Area 1A by 3,366 mt (approximately 12 percent of the 2012 Area 1A sub-ACL of 27,668 mt). Since the fleet did not exceed the stock-wide ACL in 2012, we will carry over 10 percent of the 2012 Area 1A sub-ACL to the 2014 Area 1A sub-ACL. After adding the carryover from the 2012 sub-ACL, 2014 Area 1A sub-ACL will be 33,967 mt (increased by 2,767 mt, equal to 10 percent of the 2012 Area 1A sub-ACL of 27,668 mt) (Table 1).

TABLE 1—HERRING MANAGEMENT AREA 2014 HERRING QUOTAS (MT)

| Area | 2014 | 2014 adjustment |
|---|---|---|
| Area 1A | 31,200 | 33,967 |
| Area 1B | 4,600 | 3,016 |
| Area 2 | 30,000 | 29,664 |
| Area 3 | 42,000 | 40,675 |

After deducting the overages and adding the carryover amount to the sub-ACLs, the total catch available to the herring fleet is reduced by 477 mt. The summary of the proposed rule incorrectly stated it was increased. The background section clearly noted, however, the overall catch may not increase as a result of carryover. The methods for determining the final 2012 catch rates and subsequent 2014 adjustments were discussed in detail in the proposed rule and are not repeated here (78 FR 70009, November 22, 2013).

**Comments and Responses**

NMFS received no comments on this action.

**Changes From the Proposed Rule**

There are no changes from the proposed rule.

**Classification**

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable law.

The National Environmental Policy Act analyses to support this action were completed in Amendment 4 (76 FR 11373, March 2, 2011) and 2013–2015 Specifications/Framework 2 (78 FR 46897, August 2, 2013).

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this rule and establish the date of publication in the **Federal Register** as the effective date for this action because delaying the effectiveness of the rule is contrary to the public interest and impracticable. The 2014 herring fishing year began on January 1, 2014. To prevent confusion and potential overharvests, it is in the best interest of the fleet and the herring resource to have the proper sub-ACLs in place immediately. Accordingly, any delay in the rule's effectiveness would undermine the conservation objectives of the MSA and the Herring FMP, which would be contrary to the public interest.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received on this certification, and no other information has been received that would change the determination. As a result, a Final Regulatory Flexibility Analysis is not required, and none was prepared.

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

Dated: March 13, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 2014–06063 Filed 3–18–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 100120035–4085–03]**

**RIN 0648–AY26**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 14; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a mistake in the effective dates in the final rule for Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

**DATES:** Effective March 26, 2014, except for the amendments to § 648.7(b)(3)(ii)–(iii) and § 648.10 which are effective September 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Aja Szumylo, Fishery Policy Analyst, 978–281–9195.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rule for Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan was published in the **Federal Register** on February 24, 2014 (79 FR 10029). The final measures in that action included: Revising vessel reporting requirements (vessel trip reporting frequency, pre-trip and pre-landing vessel notification requirements, and requirements for vessel monitoring systems); expanding vessel requirements to maximize observer's ability to sample catch at-sea; minimizing the discarding of unsampled catch; and a measure to allow the Council to set a cap on river herring and shad catch in the Atlantic mackerel fishery.

The final rule set the effective date for amendments to regulations at § 648.7(b)(3)(ii)–(iii) and § 648.10 as April 25, 2014. These regulations establish vessel monitoring system requirements for limited access mackerel and longfin squid/butterfish moratorium permit holders. Because of the time and costs associated with purchasing and installing a new VMS unit, NMFS intended to allow these permit holders 6 months to complete purchase units, installation, and become familiar with the new requirements. To allow time for permit holders to comply with this new requirement, this correction adjusts the effective date for these measures to September 1, 2014. This correction does not change the intent or application of the measures described in the proposed and final rule.

**Classification**

Because it makes only minor, non-substantive changes and does not change operating practices in the fishery, it is unnecessary under 5 U.S.C. 553(b)(B) to provide for prior public comment. Because this correction notice does not constitute a substantive rule, it is not subject to the requirement for a 30-day delay in effective date in 5 U.S.C. 553(d).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

**Correction**

In the **Federal Register** of February 24, 2014, in FR Doc. 2014–03906, on page 10030, in the first column, the effective date is corrected in the **DATES** section of this document.

Dated: March 12, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2014–05822 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 130925836–4174–02]**

**RIN 0648–XD189**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2014 Pacific cod total allowable catch apportioned to catcher/processors using trawl gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 14, 2014, through 1200 hours, A.l.t., June 10, 2014.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2014 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using trawl gear in the Central Regulatory Area of the GOA is 782 metric tons (mt), as established by the final 2014 and 2015 harvest specifications for groundfish of the GOA (79 FR 12890, March 6, 2014).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2014 Pacific cod TAC apportioned to catcher/processors using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 150 mt and is setting aside the remaining 632 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher/processors using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 13, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 14, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–06075 Filed 3–14–14; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 131021878–4158–02]**

**RIN 0648–XD190**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod, except for the Community Development Quota program (CDQ), in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the non-CDQ allocation of the 2014 Pacific cod total allowable catch (TAC) in the Aleutian Islands subarea of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2014, through 2400 hrs, A.l.t., December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The non-CDQ allocation of the 2014 Pacific cod TAC in the Aleutian Islands subarea of the BSAI is 6,248 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the non-CDQ allocation of the 2014 Pacific cod TAC in the Aleutian Islands subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,748 mt, and is setting aside the remaining 1,500 mt as incidental catch in directed fishing for other species. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of non-CDQ Pacific cod in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 14, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 14, 2014.

**Emily H. Menashes,**

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

[FR Doc. 2014–06077 Filed 3–14–14; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 79, No. 53
Wednesday, March 19, 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.

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 907

## FEDERAL HOUSING FINANCE AGENCY

## 12 CFR Part 1211

**RIN 2590–AA66**

## Procedures

**AGENCIES:** Federal Housing Finance Board; Federal Housing Finance Agency.

**ACTION:** Proposed rule; with request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to amend its regulations by relocating to the FHFA chapter of the Code of Federal Regulations (CFR) a Federal Housing Finance Board (Finance Board) regulation relating to procedures under which the Federal Home Loan Banks (Banks) and the Office of Finance (OF) may request waivers, approvals, no-action letters, and regulatory interpretations. The proposed rule would modify these regulations to make them also available to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and would repeal provisions relating to the procedures for requesting case-by-case determinations.

**DATES:** Written comments on the proposed rule must be received on or before May 19, 2014. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit your comments on the proposed rule, identified by regulatory information number ''RIN 2590–AA66,'' by any of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel, may be sent by email to *RegComments@FHFA.gov.* Please include ''RIN 2590–AA66'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@FHFA.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Comments/RIN 2590–AA66.
- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA66, Federal Housing Finance Agency, Constitution Center (OGC), 400 7th Street SW., Washington, DC 20024.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590–AA66, Federal Housing Finance Agency, Constitution Center (OGC), 400 7th Street SW., Washington, DC 20024. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Amy Bogdon, *Amy.Bogdon@fhfa.gov,* (202) 649–3320, Associate Director, Division of Federal Home Loan Bank Regulation; or Michou Nguyen, *Michou.Nguyen@fhfa.gov,* (202) 649–3081 (not toll-free numbers), Assistant General Counsel, Office of General Counsel, Federal Housing Finance Agency, Constitution Center (OGC), 400 7th Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final regulation. All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information you provide, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Constitution Center, Eighth Floor (OGC), 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

### II. Background

*A. Purpose of the Proposed Rule*

This proposed rule is part of FHFA's ongoing project to repeal or relocate all remaining Finance Board regulations. Part 907 of the Finance Board regulations, 12 CFR part 907, established procedures under which a Bank, the OF, or a Bank member could request that the Finance Board approve a transaction, waive a regulation, issue a regulatory interpretation, or issue a no-action letter. Part 907 also established a quasi-judicial process under which a Bank or the OF could petition the Finance Board's board of directors for a ''case-by-case determination'' on certain matters for which no controlling Finance Board precedent existed. Pursuant to the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, the Banks and OF continue to operate under the Finance Board regulations, including part 907, until such regulations are repealed or superseded by FHFA. *See id.* at sections 1301, 1302, 1311, 1312, 122 Stat. 2794–95, 2797–98. Through this proposed rule, FHFA intends to adopt as its own, and extend to the Enterprises, the provisions of part 907 pertaining to waivers, approvals, no-action letters, and regulatory interpretations, certain of which would be amended as described below. FHFA also is proposing to repeal those provisions of part 907 that pertain to case-by-case determinations, in part because they are more geared to the organizational structure of the Finance Board, which was headed by a five person board of directors, and in part because FHFA believes that the notice and comment rulemaking process is a better means for addressing matters of first impression to the agency. The following sections briefly describe each of the provisions of the proposed rule, which would be located in a new part 1211 of the FHFA regulations, and how it differs from the corresponding provision of part 907 of the Finance Board regulations.

*B. Considerations of Differences Between the Banks and the Enterprises*

When promulgating regulations or taking other actions that relate to the

Banks, the FHFA Director (Director) is required by section 1313(f) of the Safety and Soundness Act (as amended by section 1201 of HERA) to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. 12 U.S.C. 4513(f). In preparing the proposed rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that none of the statutory factors would be adversely affected by the proposed rule. The Director is requesting comments from the public about whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks.

**III. Proposed Part 1211**

Proposed part 1211 would set forth procedures that the regulated entities and the OF must follow in order to request waivers, approvals, non-objection letters, and regulatory interpretations from FHFA. It consists of a section for definitions, sections describing the nature of requests for waivers, approvals, non-objection letters, and regulatory interpretations, and a section that sets forth submission requirements for such requests. Nearly all of the content of part 1211 is derived from Finance Board regulation 907, with modifications as are necessary either to apply the regulation to the Enterprises, or to clarify, update, or supplement the existing regulation, as appropriate. *The procedures within proposed part 1211 are intended to address regulatory matters relating to the Banks and the Enterprises. They are not intended to be used to address conservatorship matters.*

*A. Definitions (1211.1)*

The proposed rule would include definitions of ''waiver,'' ''approval,'' ''non-objection letter,'' ''regulatory interpretation,'' and ''requester.'' The definition of ''approval'' is being relocated without any substantive change. The definition of ''waiver'' would be revised only by adding the word ''Director,'' to specify who issues a waiver, and by deleting the reference to ''member,'' the effect of which would be to preclude Bank members from seeking waivers from FHFA. As a practical matter, FHFA has no direct regulatory authority over members and thus has few regulations that apply directly to the members. FHFA also is proposing to replace the term ''no-action letter'' with ''non-objection letter'' to better reflect FHFA's current practices. A non-objection letter would be defined as a written statement that FHFA does not object to a proposed transaction or activity. FHFA believes that this approach would be more consistent with its actual practices than is the definition of a no-action letter, under which FHFB staff could commit not to recommend supervisory action for non-compliance with a statute, rule, regulation, policy, or order. FHFA also is proposing to amend the definition of ''regulatory interpretation'' to specify that such interpretations are to be issued by the FHFA General Counsel, which would be consistent with the agency's practices; the current regulations simply refer to FHFA staff. The definition of ''requester'' also would be modified to clarify that only an entity that FHFA regulates (*i.e.,* a Bank, Enterprise, or the OF) may submit a request under these provisions. Under part 907, Bank members were permitted to request a waiver from the Finance Board, and ''any other entity or person'' was permitted to request a regulatory interpretation. This expanded scope was hardly ever used. Although FHFA is proposing to limit the use of these procedures to the entities it regulates, that would not preclude other interested parties from seeking guidance from FHFA on particular matters through other, less formal, means, such as through correspondence. They can also petition for rulemaking under section 553(e) of the Administrative Procedure Act. Lastly, the proposed rule would add a new definition for the term ''authorizing statutes,'' which would include the respective chartering act of each Enterprise and the Federal Home Loan Bank Act (Bank Act). FHFA is proposing to use that term in place of the current regulation's multiple references to the Bank Act.

*B. Waivers (1211.2)*

The proposed rule would revise the existing waiver provision by: (1) Applying it to the Enterprises; (2) deleting the provision that allows Bank members to request a waiver; and (3) adding new language that reserves the right to the Director to modify, rescind, or supersede a previously issued waiver, on a prospective basis. Because the issuance of a waiver is a matter of discretion for the Director, the proposal would make clear that the director may terminate any previously issued waiver, should circumstances change. Because an entity receiving a waiver would be entitled to rely on it, the proposal also makes clear that any decision by the Director to terminate or modify a waiver would only apply prospectively. The proposed rule would retain the same standards as the existing waiver regulation. Thus, it would authorize the Director to waive any FHFA regulation (including any regulation of its predecessor agencies), or any required submission of information, that is not otherwise required by statute, in connection with a particular transaction or activity. The rule also requires that the Director determine that the application of the provision sought to be waived, in a particular case, would adversely affect the achievement of the purposes of the Authorizing Statutes or the Safety and Soundness Act, or that the requester has demonstrated good cause. The proposed rule also would retain the existing requirement that the granting of a waiver may not be inconsistent with the law and may not adversely affect any substantial existing rights.

*C. Approvals (1211.3)*

Section 1211.3 of the proposed rule would address the submission of requests for approvals, and would be relocated from § 907.3, with the changes noted below. The proposed rule would revise the organization and wording of the existing provision to follow more closely the format of the provision for regulatory interpretations. Thus, the proposal would authorize the Deputy Directors for Enterprise Regulation and Federal Home Loan Bank Regulation to approve transactions pertaining to their respective entities, and would explicitly state that the Director reserves the right to modify or rescind a previously issued approval, on a prospective basis. The proposal also includes conforming changes that are necessary to apply the provision to the Enterprises. Proposed section 1211.3 provides that a requester may apply for an approval of any transaction, activity, or item that requires FHFA approval under any applicable statute, rule, regulation, policy, or order, unless alternative procedures are prescribed by the applicable statute, rule, regulation, policy, or order. For example, because Bank requests for FHFA approval to undertake new business activities are subject to the procedural requirements of part 1272 of the FHFA regulations, approvals for a new business activity would not be subject to this provision. The proposed rule would retain the substance of the existing provision that ''FHFA reserves the right'' to prescribe additional or alternative procedures for any application to approve a particular transaction, activity, or item, but would specify that the Deputy Directors for Enterprise regulation or Bank

Regulation, as appropriate, may prescribe such alternative procedures.

*D. Non-Objection Letters (1211.4)*

The proposed rule would revise the organization and wording of the existing provision to follow more closely the format of the provision for regulatory interpretations, as described above. The proposed rule also would differ substantively from § 907.4, which pertains to the issuance of no-action letters. The proposal would replace the existing concept of a no-action letter with a new provision authorizing the Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, to issue a non-objection letter to an Enterprise or to a Bank or the OF, respectively. The key aspect of a no-action letter is that it represents a commitment from agency staff not to recommend that the agency initiate supervisory or enforcement action for an entity's failure to comply with an otherwise applicable law or regulation. FHFA has decided not to adopt the no-action letter approach because it believes that the concept is not as well-suited to its oversight of the regulated entities as it is to other regulatory agencies, which oversee different industries and have an institutional history of using no-action letters as part of their oversight process. Instead, FHFA is proposing to codify its existing informal practice of issuing letters to the regulated entities in response to requests that they be allowed to engage in a particular proposed transaction or activity. Under the proposal, a non-objection letter is a letter stating that FHFA does not object to a proposed transaction or activity, which is issued for supervisory, regulatory, or policy reasons.

With the exception of the changes described above, proposed § 1211.4 closely parallels the provisions of the no-action provision of § 907.4 of the Finance Board regulations. Thus, the proposed rule would provide that the issuance of a non-objection letter is a matter of discretion for the Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation. It also reserves to the Director the right to modify, rescind, or supersede a non-objection letter, but only on a prospective basis. This differs from § 907.4, which did not authorize the Director to rescind a no-action letter, and did not specify that such action applied only prospectively. As with a no-action letter, a non-objection letter also is prospective in nature, must relate to a specific proposed transaction or activity, not past conduct, and applies only to the entity addressed.

*E. Regulatory Interpretations (1211.5)*

Proposed § 1211.5 authorizes the FHFA General Counsel, in his discretion, to issue to a regulated entity or the OF a regulatory interpretation that provides guidance with respect to the application of any applicable statute, rule, regulation, or order to a proposed transaction or activity. Substantively, the operative provisions of § 1211.5 are much the same as those of § 907.5 of the Finance Board regulations. The proposed rule differs in that it explicitly authorizes the General Counsel to issue the interpretations, compared to part 907, which simply referred to Finance Board staff. The proposed rule also differs in that it allows only the regulated entities and the OF to seek regulatory interpretations. Part 907 also allowed Bank members, officials of a Bank or a member, or any other person or entity to request a regulatory interpretation. As noted above, FHFA believes that these procedures for seeking a formal response from the agency should be limited to the entities that the agency regulates, and should not be available as a matter of course to other parties.

Under the proposed rule, a request for a regulatory interpretation must relate to a proposed transaction or activity, not to a hypothetical situation. Additionally, the proposed rule authorizes the Director to modify, rescind, or supersede any regulatory interpretation on a prospective basis, which differs from the existing provision by explicitly mentioning rescission and prospective application.

*F. Submission Requirements (1211.6)*

Proposed § 1211.6 contains the procedural requirements for submitting all applications for waivers or approvals and for all requests for non-objection letters or regulatory interpretations, which are much the same as the existing procedures. The proposal would retain the requirement that all applications or requests must be in writing and would further specify that the Banks and the OF must file their applications or requests with the Deputy Director for the Division of Federal Home Loan Bank Regulation, and that the Enterprises must file their submissions with the Deputy Director for Enterprise Regulation, and that requests for regulatory interpretations must be filed also with the General Counsel. The regulation would revise the existing regulations as they relate to who must sign the application or request by requiring that the president of a regulated entity or the chairman of the OF must sign the submissions. The Finance Board regulations differ in this respect because they allow persons other than the regulated entities and the OF to seek a waiver or a regulatory interpretation. Because FHFA is narrowing the scope of the regulation to the regulated entities and OF, the submission requirements need not differ with respect to who must sign the submission. The proposed rule also would retain an existing requirement that applications for waivers and approvals must be accompanied by a resolution of the board of directors of the requester concurring in the substance and authorizing the filing of the application.

The proposed rule also would retain the provisions of the existing regulation that specify the content of these submissions. Thus, each application or request must contain: (1) The name and contact information for the person making the request; (2) the name of a contact person; (3) section numbers of applicable statutes, rules, regulations, policies, or orders; (4) identification of the determination or relief requested; (5) a statement of facts; (6) references to all relevant authorities; (7) references to any applicable past waivers, approvals, non-objection letters, or regulatory interpretations previously issued; (8) an opinion of counsel, in certain circumstances; (9) any other supporting documentation; and (10) a certification that statements contained in the submission are true and complete. The regulation would retain a provision allowing for the withdrawal of an application or request that has not yet been acted on by FHFA. Lastly, the proposed rule would modify a provision permitting the managing director of the Finance Board to waive any of the submission requirements. Instead, the proposal would permit the Director, the Deputy Directors for Enterprise Regulation or for Federal Home Loan Bank Regulation, or the General Counsel, as appropriate, to accept an application or request that does not comply with the submission requirements, either for supervisory reasons or for administrative efficiency. They also may exercise this authority on a case-by-case basis or for an entire class of submission. Because the proposed rule would repeal the provisions allowing persons or entities other than the regulated entities and the OF to seek waivers or regulatory interpretations, FHFA believes that there is no need for a general waiver provision, as the proposed submission requirements

would not be overly burdensome for the regulated entities or the OF.

*G. Repeal of Issuance Procedures*

Current Finance Board § 907.7 contains three provisions that address the logistics of issuing waivers, approvals, no-action letters, and regulatory interpretations. Those provisions provide for a three day review period of all such documents by the board of directors of the Finance Board, specify when the documents are to be effective, and permit the Finance Board to respond to any application or request in an abbreviated form. The first provision is no longer necessary because FHFA does not have a board of directors. The other provisions are not necessary because the effective date and the format of FHFA's response can be better addressed in the individual documents, rather than in a regulation. Therefore, FHFA proposes to repeal all of those provisions.

## IV. Paperwork Reduction Act

The proposed regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to analyze a proposed rule's impact on small entities if the final rule is expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this rulemaking and determined that it is not likely to have a significant economic impact on a substantial number of small entities because it would apply only to the regulated entities and the OF, which are not small entities for purposes of the Regulatory Flexibility Act.

## List of Subjects

*12 CFR Part 907*

Administrative practice and procedure, Federal Home Loan Banks.

*12 CFR Part 1211*

Administrative practice and procedure, Federal Home Loan Banks, Government-Sponsored Enterprises.

Accordingly, for reasons stated in the Supplementary Information and under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA hereby proposes to amend subchapter B of chapter IX and subchapter A of chapter XII of title 12 of the Code of Federal Regulations as follows:

## CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

## SUBCHAPTER B—FEDERAL HOUSING FINANCE BOARD ORGANIZATION AND OPERATIONS

## PART 907—[REMOVED]

■ 1. Remove part 907.

## CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

## SUBCHAPTER A—ORGANIZATION AND OPERATIONS

■ 2. Part 1211 is added to read as follows:

## PART 1211—PROCEDURES

### Subpart A—Definitions

Sec.
1211.1 Definitions.

### Subpart B—Waivers, Approvals, Non-Objection Letters, and Regulatory Interpretations

Sec.
1211.2 Waivers.
1211.3 Approvals.
1211.4 Non-Objection Letters.
1211.5 Regulatory Interpretations.
1211.6 Submission requirements.

**Authority:** 12 U.S.C. 4511(b), 4513(a), 4526.

### Subpart A—Definitions

#### § 1211.1 Definitions.

As used in this part:

*Approval* means a written statement issued to a regulated entity or the Office of Finance approving a transaction, activity, or item that requires FHFA approval under a statute, rule, regulation, policy, or order.

*Authorizing Statutes* mean the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, and the Federal Home Loan Bank Act.

*Non-Objection Letter* means a written statement issued to a regulated entity or the Office of Finance providing that FHFA does not object to a proposed transaction or activity.

*Regulatory Interpretation* means a written interpretation issued by the FHFA General Counsel with respect to the application of a statute, rule, regulation, or order to a proposed transaction or activity.

*Requester* means an entity that has submitted an application for a Waiver or Approval or a request for a Non-Objection Letter or Regulatory Interpretation.

*Waiver* means a written statement issued by the Director to a regulated entity or the Office of Finance that waives a provision, restriction, or requirement of an FHFA rule, regulation, policy, or order, or a required submission of information, not otherwise required by law, in connection with a particular transaction or activity.

### Subpart B—Waivers, Approvals, Non-Objection Letters, and Regulatory Interpretations

#### § 1211.2 Waivers.

(a) *Authority.* The Director reserves the right, in his or her discretion and in connection with a particular transaction or activity, to waive any provision, restriction, or requirement of this chapter (or of any Office of Federal Housing Enterprise Oversight or Federal Housing Finance Board regulation), or any required submission of information, not otherwise required by law, if such Waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Authorizing Statutes or the Safety and Soundness Act, or upon a requester's showing of good cause. The Director also reserves the right to modify, rescind, or supersede any previously issued Waiver, with such action being effective only on a prospective basis.

(b) *Application.* A regulated entity or the Office of Finance may apply for a Waiver in accordance with § 1211.6.

#### § 1211.3 Approvals.

(a) *Authority.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, may grant requests submitted by an Enterprise or by a Bank or the Office of Finance, respectively, seeking approval of any transaction, activity, or item that requires FHFA approval under any applicable statute, rule, regulation, policy, or order. The Director reserves the right to modify, rescind, or supersede an Approval, with such action being effective only on a prospective basis.

(b) *Requests.* A regulated entity or the Office of Finance may apply for an Approval in accordance with § 1211.6, unless alternative application procedures are prescribed by the applicable statute, rule, regulation, policy, or order for the transaction, activity, or item at issue.

(c) *Reservation.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, as appropriate, may, in their discretion, prescribe additional or alternative procedures for any application for

approval of a transaction, activity, or item.

**§ 1211.4 Non-Objection Letters.**

(a) *Authority.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, may, in their discretion, issue to an Enterprise or to a Bank or the Office of Finance, respectively, a Non-Objection Letter stating that FHFA does not object to a proposed transaction or activity for supervisory, regulatory, or policy reasons. The Director reserves the right to modify, rescind, or supersede a Non-Objection Letter, with such action being effective only on a prospective basis.

(b) *Requests.* A regulated entity or the Office of Finance may request a Non-Objection Letter in accordance with § 1211.6.

**§ 1211.5 Regulatory Interpretations.**

(a) *Authority.* The General Counsel may, in his or her discretion, issue a Regulatory Interpretation to a regulated entity or the Office of Finance, providing guidance with respect to the application of any applicable statute, rule, regulation, or order to a proposed transaction or activity. The Director reserves the right to modify, rescind, or supersede a Regulatory Interpretation, with such action being effective only on a prospective basis.

(b) *Requests.* A regulated entity or the Office of Finance may request a Regulatory Interpretation in accordance with § 1211.6.

**§ 1211.6 Submission requirements.**

Applications for a Waiver or Approval and requests for a Non-Objection Letter or Regulatory Interpretation shall comply with the requirements of this section and shall pertain to regulatory matters relating to the Banks or Enterprises, and not to conservatorship matters.

(a) *Filing.* Each application or request shall be in writing. A Bank or the Office of Finance shall submit its filing to the Deputy Director for the Division of Federal Home Loan Bank Regulation, and an Enterprise shall submit its filing to the Deputy Director for Enterprise Regulation. Applications for regulatory interpretations shall be submitted also to the General Counsel.

(b) *Authorization.* An application for a Waiver or Approval and a request for a Non-Objection Letter or Regulatory Interpretation shall be signed by the president of the regulated entity or by the chairperson of the board of directors of the Office of Finance, as appropriate. Applications for Waiver or Approval also shall be accompanied by a resolution of the board of directors concurring in the substance and authorizing the filing of the application.

(c) *Information requirements.* Each application or request shall contain:

(1) The name of the requester, and the name, title, business address, telephone number, and business electronic mail address, if any, of the official filing the application or request on its behalf;

(2) The name, business address, telephone number, and business electronic mail address, if any, of a contact person from whom FHFA staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the applicable statutes or rules, regulations, policies, or orders to which the application or request relates;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the application or request and identifying all relevant legal and factual issues;

(6) References to all other relevant authorities, including the Authorizing Statutes, Safety and Soundness Act, FHFA rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(7) References to any Waivers, Non-Objection Letters, Approvals, or Regulatory Interpretations issued in the past in response to circumstances similar to those surrounding the request or application;

(8) For any application or request involving interpretation of the Authorizing Statutes, Safety and Soundness Act, or FHFA regulations, a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(9) Any other non-duplicative, relevant supporting documentation; and

(10) A certification by a person with knowledge of the facts that the representations made in the application or request are accurate and complete. The following form of certification is sufficient for this purpose: ''I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title].''

(d) *Exceptions.* In any given matter or class of matters, the Director, the Deputy Director for Federal Home Loan Bank Regulation, the Deputy Director for Enterprise Regulation, or the General Counsel, as appropriate, may accept an application or request that does not comply with the requirements of this section, for supervisory reasons or administrative efficiency.

(e) *Withdrawal.* Once filed, an application or request may be withdrawn only upon written request, and only if FHFA has not yet acted on the application or request.

Dated: March 13, 2014.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2014–06033 Filed 3–18–14; 8:45 am]

BILLING CODE 8070–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Honeywell International Inc. Turboprop Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede airworthiness directive (AD) 2006–15–08, which applies to all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with certain part numbers (P/Ns) of Woodward fuel control unit (FCU) assemblies, installed. AD 2006–15–08 currently requires initial and repetitive dimensional inspections of the fuel control drive spline for wear, and replacement of the FCU and fuel pump. Since we issued AD 2006–15–08, we determined that additional FCU assembly P/Ns are affected, the compliance deadline and assembly replacement after removal for cause or overhaul are no longer required, and that cautionary engine operating information must be observed. This proposed AD was prompted by reports of loss of the fuel control drive, leading to engine overspeed, overtorque, overtemperature, uncontained rotor failure, and asymmetric thrust in multi-engine airplanes. This proposed AD would require initial and repetitive dimensional inspections of the affected fuel control drive splines, and insertion of certain airplane operating procedures into the applicable flight manuals. We

are proposing this AD to prevent failure of the fuel control drive that could result in damage to the engine and airplane.

**DATES:** We must receive comments on this proposed AD by May 19, 2014.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut/*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2006–23706; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

## Discussion

On July 14, 2006, we issued AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), for all Honeywell International Inc. TPE331 series turboprop engines with certain P/Ns of Woodward FCU assemblies installed. AD 2006–15–08 requires initial and repetitive dimensional inspections of the fuel control drive spline for wear that might cause replacement of the FCU and/or fuel pump assemblies. AD 2006–15–08 also requires the replacement of the FCU assembly when the FCU is removed for cause or overhaul, but not later than December 31, 2012. AD 2006–15–08 was prompted by fuel control drive failures that resulted in a rapid, uncommanded, uncontrolled increase in fuel flow and overspeed of the engine during ground start. We issued AD 2006–15–08 to prevent failure of the fuel control drive, destructive overspeed that could result in uncontained rotor failure and damage to the airplane.

## Actions Since AD 2006–15–08 Was Issued

Since we issued AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), we determined that additional FCU assembly P/Ns are affected, certain repetitive fuel control drive inspections are necessary, and that additional flight crew emergency procedures and warnings are required. The warnings are required to inform flight crew of the probable engine response(s) following a loss of drive between the engine driven fuel pump and fuel control governor system. These engine responses are dependent on the phase of operation (ground engine start, ground or flight operations).

Also since we issued AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), we reviewed the in-service trends and engine in-flight shutdowns (IFSDs) caused by the modified FCU and determined that the IFSD rate had not improved and the installation of the modified FCU assembly was not required.

## FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

## Proposed AD Requirements

This proposed AD would require continued dimensional spline inspections required by AD 2006–15–08, add new P/Ns of affected FCU assemblies that require dimensional spline inspections. This proposed AD would require insertion of uncommanded engine overspeed procedures into the Airplane Flight Manual, Pilot Operating Handbook, and or Manufacturer's Operating Manual. This proposed AD would retain some but not all requirements of AD 2006–15–08, (71 FR 41121, July 20, 2006), but would no longer require the installation of a modified FCU.

## Costs of Compliance

We estimate that this proposed AD would affect 2,250 engines installed on airplanes of U.S. registry. We estimate that it would take 8 hours per engine to perform an FCU inspection, and three inspections will be required over the life of the product. The average labor rate is $85 per hour. Due to the more frequent inspections proposed by this AD, we estimate 10% of affected engines would require FCU assembly stub shaft replacement, fuel pump or fuel control repair. We also estimate that repairs should not exceed $10,000 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $6,307,044.

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Amend § 39.13 by removing airworthiness directive (AD) 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), and adding the following new AD:

**Honeywell International Inc.:** Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by May 19, 2014.

**(b) Affected ADs**

This AD supersedes AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006).

**(c) Applicability**

This AD applies to all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with the part numbers (P/Ns) of Woodward fuel control unit (FCU) assemblies listed in Table 1 to paragraph (c) of this AD, installed.

TABLE 1 TO PARAGRAPH (C)—AFFECTED FCU ASSEMBLY P/NS

| Group # | Engine | FCU Assembly P/Ns |
|---|---|---|
| 1 | TPE331–1, –2, and –2UA | P/N 869199–13, –20, –21, –22, –23, –24, –25, –26, –27, –28, –29, –31, –32, –33, –34, and –35. |
| 2* | TPE331–1, –2, and –2UA | P/N 869199–9, –10, –11, –12, –14, –16, –17, and –18. |
| 3 | TPE331–3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –I0AV, –10GP, –10GT, –I0P, and –I0T. | P/N 893561–7, –8, –9, –10, –11, –14, –15, –16, –20, –26, –27, and –29; or P/N 897770–1, –3, –7, –9, –10, –11, –12, –14, –15, –16, –25, –26, and –28. |
| 4* | TPE331–3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –I0AV, –10GP, –10GT, –I0P, and –I0T. | P/N 893561–4, –5, –12, and –13 or P/N 897770–5, –8, and –13. |
| 5 | TPE331–10, –I0R, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR. | P/N 897375–2, –3, –4, –5, –8, –9, –10, –11, –12, –13, –14, –15, –16, –17, –19, –21, –24, –25, –26, and –27; or P/N 897780–1, –2, –3, –4, –5, –6, –7, –8, –9, –10, –11, –14, –15, –16, –17, –18, –19, –20, –21, –22, –23, –24, –25, –26, –27, –30, –32, –34, –36, –37, and –38; or P/N 893561–17, –18, and –19. |

* New/added FCU assembly P/Ns

**(d) Unsafe Condition**

This AD was prompted by reports of loss of the fuel control drive, leading to engine overspeed and engine failure. We are issuing this AD to prevent damage to the engine, and damage to the airplane.

**(e) Compliance**

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

**(1) Inspection of Engines with FCU Assembly P/Ns in Groups 2 and 4**

For FCU assembly P/Ns in Groups 2 and 4 listed in Table 1 to paragraph (c) of this AD, at the next scheduled inspection of the fuel control drive, or within 500 hours-in-service (HIS) after the effective date of this AD, whichever occurs first:

(i) Inspect the fuel control drive spline for wear.

(ii) Thereafter, re-inspect the fuel control drive within 1,000 HIS since-last-inspection (SLI) of the fuel control drive.

**(2) Inspection of Engines with FCU Assembly P/Ns in Groups 1, 3, and 5**

(i) For FCU assembly P/Ns in Groups 1, 3, or 5 listed in Table 1 to paragraph (c) of this AD:

(A) If on the effective date of this AD the FCU assembly has 950 or more HIS SLI, inspect the fuel control drive spline for wear within 50 HIS from the effective date of this AD.

(B) If on the effective date of this AD the FCU assembly has fewer than 950 HIS SLI, inspect the fuel control drive spline for wear before reaching 1,000 HIS.

(ii) Thereafter, re-inspect the fuel control drive spline for wear within every 1,000 HIS SLI.

**(3) Airplane Operating Procedures**

Within 60 days after the effective date of this AD, insert the information in Figure 1 to paragraph (e) of this AD, into the Emergency Procedures Section of the Airplane Flight Manual (AFM), Pilot Operating Handbook (POH), and the Manufacturer's Operating Manual (MOM).

BILLING CODE 4910–13–P

**Figure 1 to Paragraph (e) – Operating Procedures**

**Loss of Fuel Control Drive Procedures**

NOTE
Procedures in boxes are immediate action items to be performed by the pilot / flight crew.

PROPELLER ON START LOCKS:

WARNING

If a fuel control drive fails during ground engine starts with the propeller ON the start locks, the engine will experience a rapid uncommanded, uncontrolled acceleration to an overspeed condition sufficient to cause an uncontained separation of high speed rotating components.

RAPID, UNCOMMANDED ACCELERATION DURING ENGINE START (Propeller ON Start Locks)

- Engine Start – Abort Immediately

WARNING

Do not attempt a re-start until after inspecting the fuel control drive and rotating components in accordance with the applicable maintenance manual.

PROPELLER OFF START LOCKS:

WARNING

If a fuel control drive fails during ground or flight operations with the propeller OFF the start locks, the engine will experience a rapid uncommanded, uncontrolled increase and/or oscillations in RPM, torque and/or turbine temperature (the engine may exceed RPM, torque and/or temperature limits) and increased forward thrust. Reverse thrust will not be available. For multi-engine airplanes an uncommanded fuel flow increase on only one engine could result in significant asymmetric thrust. Therefore, an uncontrolled fuel flow increase is most serious when it occurs to one engine with the opposite engine at a relatively low power setting, such as during an approach or during the landing rollout. Carefully identify failed engine.

RAPID, UNCOMMANDED INCREASE IN RPM, TORQUE, FUEL FLOW AND/OR TURBINE TEMPERATURE (Propeller OFF Start Locks)

- Identify Malfunctioning Engine (multiengine airplane) – Cross check for high torque, RPM, fuel flow and turbine temperatures.
- Power – Move Power Lever to or toward Flight Idle as required to maintain engine limits.

WARNING

Never retard the power levers aft of flight idle in flight or on the ground.

- If limits cannot be maintained or engine is non-responsive, shut engine down as soon as possible consistent with safe operation of the airplane.

WARNING

Do not attempt a re-start until after inspecting the fuel control drive and rotating components in accordance with the applicable maintenance manual.

BILLING CODE 4910–13–C

**(f) Optional Terminating Action**

Replacing the affected FCU assembly with an FCU assembly P/N not listed in this AD is terminating action for the initial and repetitive inspections required by this AD, and for inserting the information in Figure 1 to paragraph (e) of this AD into the AFM, POH, and MOM.

**(g) Definitions**

For the purposes of this AD:

(1) The ''fuel control drive'' is a series of mating splines located between the fuel pump and fuel control governor.

(2) The fuel control drive consists of four drive splines: the fuel pump internal spline, the fuel control external ''quill shaft'' spline, and the stub shaft internal and external splines.

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

The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(i) Related Information**

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

(2) Honeywell International Inc., AFM, POH, and MOM, which are not incorporated by reference in this AD, can be obtained from Honeywell International Inc., using the contact information in paragraph (i)(4) of this AD.

(3) Information pertaining to operating recommendations for affected engines after a fuel control drive failure is contained in Honeywell International Inc., Operating Information Letter (OIL) OI331–12R6, dated

May 26, 2009, for multi-engine airplanes; and in OIL OI331–18R4, dated May 26, 2009, for single-engine airplanes. Information on fuel control drive spline inspection can be found in Section 72–00–00 of the applicable TPE331 maintenance manuals. These Honeywell International Inc., OILs and the TPE331 maintenance manuals, which are not incorporated by reference in this AD, can be obtained from Honeywell International Inc., using the contact information in paragraph (i)(4) of this AD.

(4) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut;* phone: 800–601–3099.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 10, 2014.

**Colleen M. D'Alessandro,**

*Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2014–06029 Filed 3–18–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R; F4–605R, F4–622R and C4–605R variant F airplanes. This proposed AD was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. This proposed AD would require repetitive detailed inspections of the lower frame fittings, related investigative actions, and corrective actions if necessary. We are proposing this AD to detect and correct cracking on the lower frame fittings, which could reduce the structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by May 5, 2014.

**ADDRESSES:** You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

The European Aviation Safety Agency (EASA), which is the technical agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0103, dated June 11, 2012 (corrected June 19, 2012) (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During maintenance checks, cracks were discovered by A300 and A300–600 operators in the frame [base] feet fittings, connecting the frame lower positions to the centre wing box.
>
> These occurrences were followed by a dedicated sampling inspection programme carried out by Airbus. During this sampling programme, 22 A300–600 aeroplanes were found with cracks on the lower fittings of frame 44 to frame 46 left hand (LH) and right hand (RH) side.
>
> This condition, if not detected and corrected, could affect the structural integrity of the fuselage of all aeroplanes operated up to the extended service goal (ESG).
>
> For the reasons described above, this [EASA] AD requires repetitive detailed visual inspections [for discrepancies (cracking)] of the lower frame fittings between frame 41 and frame 46 and, depending on findings, accomplishment of a repair.
>
> This [EASA] AD has been republished to correct Note 2 in Appendix 1.

Related investigative actions include doing a rotating probe inspection for cracking of the crack stop hole. Corrective actions include repairing or replacing cracking and cracked base fittings. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0143.

### Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–53–6111, Revision 05, including Appendix 01, dated January 28, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, this proposed AD would require that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to a DAH authorized to approve required repairs for this proposed AD.

**Differences Between This Proposed AD and the MCAI or Service Information**

Unlike the procedures described in Airbus Mandatory Service Bulletin A300–53–6111, Revision 05, including Appendix 01, dated January 28, 2013; this proposed AD would not permit further flight if discrepancies (cracking or cracked frames) are detected in the base fitting of the left-hand and right-hand frames 41 to 46 of the fuselage. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked frame must be repaired or modified before further flight. This difference has been coordinated with EASA.

Airbus Mandatory Service Bulletin A300–53–6111, Revision 05, including Appendix 01, dated January 28, 2013, does not provide corrective action for cracking that measures 20 mm. This AD would require repairing the cracking using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA), or its delegated agent, or the Design Approval Holder with EASA's design organization approval, as applicable.

**Costs of Compliance**

We estimate that this proposed AD affects 124 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $340, or $42,160 per product.

In addition, we estimate that any necessary follow-on actions would take about 348 work-hours and require parts costing $61,810, for a cost of $91,390 per product. We have no way of determining the number of aircraft that might need these actions.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD.

**(a) Comments Due Date**

We must receive comments by May 5, 2014.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R; F4–605R, F4–622R and C4–605R variant F airplanes; certificated in any category; all serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Reason**

This AD was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. We are issuing this AD to detect and correct cracking on the lower frame fittings, which could reduce the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Inspection and Corrective Actions**

At the applicable time specified in paragraphs (g)(1) through (g)(4) of this AD, do a detailed inspection for discrepancies (cracking) of the base fitting of the left-hand and right-hand frames 41 to 46 of the fuselage, and do all applicable related investigative actions and corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–6111, Revision 05, dated January 28, 2013, except as required by paragraph (k) of this AD. Do all applicable related investigative actions and corrective actions before further flight. Repeat the inspections at the applicable time specified in paragraphs (h)(1) through (h)(4) of this AD.

(1) For any frame on which no affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane has operated with an average flight time (AFT) of more than 1.5 hours: At the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Within 5,000 flight cycles (FC) or 10,800 flight hours, whichever occurs first, since airplane first flight.

(ii) Within 1,000 flight cycles after the effective date of this AD.

(2) For any frame on which no affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane has operated with an AFT of equal to or less than 1.5 hours: At the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Within 5,400 flight cycles or 8,100 flight hours, whichever occurs first since airplane first flight.

(ii) Within 1,000 flight cycles after the effective date of this AD.

(3) For any frame on which any of the affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane has operated with an AFT of more than 1.5 hours: At the later of the times specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(i) Within 45,400 flight cycles or 98,000 flight hours, whichever occurs first since frame repair embodiment.

(ii) Within 1,000 flight cycles after the effective date of this AD.

(4) For any frame on which any of the affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane operated with an AFT of equal to or less than 1.5 hours: At the later of the times specified in paragraphs (h)(4)(i) and (h)(4)(ii) of this AD.

(i) Within 49,000 flight cycles or 73,500 flight hours, whichever occurs first since frame repair embodiment.

(ii) Within 1,000 flight cycles after the effective date of this AD.

**(h) Repetitive Inspection Compliance Times**

(1) For any frame on which no affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane has operated with an AFT of more than 1.5 hours: Inspect within 3,200 flight cycles or 7,000 flight hours, whichever occurs first.

(2) For any frame on which no affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane operated with an AFT of equal to or less than 1.5 hours: Inspect within 3,500 flight cycles or 5,300 flight hours, whichever occurs first since airplane first flight.

(3) For any frame on which any of the affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD and the airplane operated with an AFT of more than 1.5 hours: Inspect within 45,400 flight cycles or 98,000 flight hours, whichever occurs first since frame repair embodiment.

(4) For any frame on which any of the affected repairs specified in paragraph (i) of this AD have been accomplished as of the effective date of this AD, and the airplane operated with an AFT of equal to or less than 1.5 hours: Inspect within 49,000 flight cycles or 73,500 flight hours, whichever occurs first, since frame repair embodiment.

**(i) Definition of Affected Repairs**

For the purposes of this AD, affected repairs are R53810322, R53810323, R53810329, R53810330, R53810331, R53810332, and any repair specified in Airbus Mandatory Service Bulletin A300–53–6111, Revision 05, including Appendix 01, dated January 28, 2013, as well as repairs accomplished in accordance with Airbus Mandatory Service Bulletin A300–53–6111, any revision.

**(j) Definition of Average Flight Time (AFT)**

For the purposes of this AD, the AFT is defined as a computation of the number of flight hours divided by the number of flight cycles accumulated since last inspection, or since airplane first flight, as applicable.

**(k) Exceptions to Service Information Specifications**

Where Airbus Mandatory Service Bulletin A300–53–6111, Revision 05, including Appendix 01, dated January 28, 2013, does not specify action for a repair that measures 20 mm, if during any inspection required by paragraph (g) of this AD cracking is found that measures 20 mm, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder with EASA's design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

**(l) Reporting of Inspection Results**

At the applicable time specified in paragraphs (l)(1) and (l)(2) of this AD: After accomplishment of any inspection specified in paragraph (g) of this AD, report discrepancies (cracking) to Airbus, in accordance with Appendix 01 of Airbus Mandatory Service Bulletin A300–53–6111, Revision 05, dated January 28, 2013.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**(m) Clarification**

Accomplishment of corrective action(s) as required by paragraph (g) of this AD does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD.

**(n) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A300–53–6111,

Revision 04, including Appendix 01, dated August 25, 2011, which is not incorporated by reference in this AD.

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

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

**(p) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0103, dated June 11, 2012, (corrected June 19, 2012) for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0143.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 7, 2014.

**Michael J. Kaszycki,**

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

[FR Doc. 2014–06009 Filed 3–18–14; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0776; Directorate Identifier 2009–NE–32–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dowty Propellers Constant Speed Propellers

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise airworthiness directive (AD) 2010–17–11R1, which applies to all Dowty Propellers R408/6–123–F/17 model propellers. AD 2010–17–11R1 requires initial and repetitive application of sealant between the bus bar assembly and the backplate assembly of certain line-replaceable units (LRUs). That AD also provides an optional terminating action to the repetitive re-application of sealant. This proposed AD would increase the interval allowed between the required re-application of sealant, and would specify an additional acceptable sealant. We are proposing this AD to prevent an in-flight double generator failure, which could result in reduced control of the airplane.

**DATES:** We must receive comments on this proposed AD by May 19, 2014.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, UK; phone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2009–0776; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax 781–238–7170; email: *michael.schwetz@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0776; Directorate Identifier 2009–NE–32–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

*www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On August 5, 2010, we issued AD 2010–17–11, Amendment 39–16403 (75 FR 51656, August 23, 2010), (''AD 2010–17–11''), for Dowty Propellers model R408/6–123–F/17 propellers. AD 2010–17–11 required initial application and repetitive re-application of sealant between the bus bar assembly and the backplate assembly of LRU serial numbers below DAP0347. AD 2010–17–11 resulted from failure of the propeller de-ice bus bar due to friction or contact between the bus bar and the backplate assembly, consequent intermittent short circuit, and possible dual alternating current generator failure.

On June 18, 2013, we issued AD 2010–17–11R1, Amendment 39–17481 (78 FR 41283, July 10, 2013), for Dowty Propellers R408/6–123–F/17 model propellers. AD 2010–17–11R1 added an optional terminating action to the requirement for the repetitive re-application of sealant. AD 2010–17–11R1 resulted from Dowty Propellers development of a new slip ring de-icer harness to replace the bus bar assembly. We issued AD 2010–17–11R1 to prevent an in-flight double generator failure, which could result in reduced control of the airplane.

**Actions Since AD 2010–17–11R1 Was Issued**

Since we issued AD 2010–17–11R1, Dowty Propellers issued Alert Service Bulletin (ASB) No. D8400–61–A66, Revision 8, dated October 31, 2013. That ASB increased the interval between required re-application of sealant from 10,000 flight hours (FHs) to 10,500 FHs. That ASB identified an additional acceptable sealant. The European Aviation Safety Agency has issued AD 2009–0114R2, dated December 16, 2013, which incorporates the revised schedule for re-application of sealant.

**Relevant Service Information**

We reviewed Dowty Propellers ASB No. D8400–61–A66, Revision 8, dated October 31, 2013. The ASB describes procedures for performing initial and repetitive re-application of sealant between the bus bar assembly and the backplate assembly of certain LRUs.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would increase the interval from 10,000 FHs to 10,500 FHs between re-application of sealant, and would allow use of an additional acceptable sealant.

**Costs of Compliance**

We estimate that this proposed AD would affect 104 propellers installed on airplanes of U.S. registry. We also estimate that it would take about 2 hours per propeller to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $20 per propeller. Based on these figures, we estimate the total cost of this proposed AD to U.S. operators is $19,760.

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Amend § 39.13 by removing airworthiness directive (AD) 2010–17–11R1, Amendment 39–17481 (78 FR 41283, July 10, 2013), and adding the following new AD:

**Dowty Propellers:** Docket No. FAA–2009–0776; Directorate Identifier 2009–NE–32–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by May 19, 2014.

**(b) Affected ADs**

This AD revises AD 2010–17–11R1, Amendment 39–17481 (78 FR 41283, July 10, 2013).

**(c) Applicability**

This AD applies to Dowty Propellers R408/6–123–F/17 model propellers with a hub, actuator, and backplate assembly line-replaceable unit (LRU) serial number (S/N) below DAP0927.

**(d) Unsafe Condition**

This AD was prompted by failure of the propeller de-ice bus bar due to friction or contact between the bus bar and the backplate assembly, consequent intermittent short circuit, and possible double generator failure. We are issuing this AD to prevent an in-flight double generator failure, which could result in reduced control of the airplane.

**(e) Compliance**

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

(1) For R408/6–123–F/17 model propellers with a hub, actuator, and backplate assembly LRU S/N below DAP0347, do the following initial sealant application within 5,000 flight hours (FHs) after September 27, 2010, or

within 100 FHs after the effective date of this AD, whichever occurs later:

(i) Apply a sealant specified in Dowty Propellers Alert Service Bulletin (ASB) No. D8400–61–A66, Revision 8, dated October 31, 2013 between the bus bar assemblies and the backplate assembly.

(ii) Use paragraph 3.A. or 3.B. of the Accomplishment Instructions of Dowty Propellers ASB No. D8400–61–A66, Revision 8, dated October 31, 2013, to apply the sealant.

(2) Thereafter, for R408/6–123–F/17 model propellers, with a hub, actuator, and backplate assembly LRU S/N below DAP0927, re-apply sealant as specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD within every additional 10,500 FHs.

**(f) Installation Prohibition**

After the effective date of this AD, do not install any Dowty Propellers R408/6–123–F/17 model propeller unless a sealant specified in Dowty Propellers ASB No. D8400–61–A66, Revision 8, dated October 31, 2013 was applied between the bus bar assembly and the backplate assembly as specified by this AD, or unless the optional terminating action as specified in paragraph (g) of this AD was performed.

**(g) Optional Terminating Action**

As optional terminating action to the sealant application requirements of this AD, replace the bus bar assembly with a slip ring de-icer harness. Use paragraph 3.A. of the Accomplishment Instructions of Dowty Propellers Service Bulletin (SB) No. D8400–61–94, Revision 2, dated August 29, 2012, or Revision 3, dated October 23, 2012, to do the replacement.

**(h) Credit for Previous Actions**

Sealant applications performed before the effective date of this AD using Dowty Propellers SB No. D8400–61–66, dated February 9, 2007; or Revision 1, dated May 4, 2007; or ASB No. D8400–61–A66, Revision 2, dated August 19, 2009; or Revision 3, dated November 10, 2009; or Revision 4, dated January 19, 2010; or Revision 5, dated June 16, 2010; or Revision 6, dated August 17, 2011; or Revision 7, dated December 1, 2011, satisfy the initial sealant application requirement of this AD.

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

The Manager, Boston Aircraft Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(j) Related Information**

(1) For more information about this AD, contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax 781–238–7170; email: *michael.schwetz@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency, AD 2009–0114R2, dated December 16, 2013, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2009–0776.

(3) Dowty Propellers ASB No. D8400–61–A66, Revision 8, dated October 31, 2013, and Dowty Propellers SB No. D8400–61–94, Revision 3, dated October 23, 2012, pertain to the subject of this AD and can be obtained from Dowty Propellers, using the contact information in paragraph (j)(4) of this AD.

(4) For service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, UK; phone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 11, 2014.

**Kim Smith,**

*Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2014–06010 Filed 3–18–14; 8:45 am]

BILLING CODE 4910–13–P

## FEDERAL TRADE COMMISSION

## 16 CFR Part 312

**RIN 3084–AB20**

## Children's Online Privacy Protection Rule Safe Harbor Proposed Self-Regulatory Guidelines; iKeepSafe COPPA Safe Harbor Program Application

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice announcing submission of proposed ''safe harbor'' guidelines and requesting public comment.

**SUMMARY:** The Federal Trade Commission publishes this notice and request for public comment concerning proposed self-regulatory guidelines submitted by the Internet Keep Safe Coalition (''iKeepSafe''), under the safe harbor provision of the Children's Online Privacy Protection Rule.

**DATES:** Written comments must be received by April 21, 2014.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''iKeepSafe Application for Safe Harbor, Project No. 145402'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/ikeepsafeapp* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex H), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Kristin Cohen, Attorney, (202) 326–2276, Peder Magee, Attorney, (202) 326–3538, or Miry Kim, Attorney, (202) 326–3622, Division of Privacy and Identity Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

### Section A. Background

On October 20, 1999, the Commission issued its final Rule pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.,* which became effective on April 21, 2000.[1] On December 19, 2012, the Commission amended the Rule, and these amendments became effective on July 1, 2013.[2] The Rule requires certain Web site operators to post privacy policies and provide notice, and to obtain verifiable parental consent, prior to collecting, using, or disclosing personal information from children under the age of 13.[3] The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[4]

Pursuant to Section 312.11 of the Rule, iKeepSafe has submitted proposed self-regulatory guidelines to the Commission for approval. The text of the proposed guidelines is available on the Commission's Web site, at *www.ftc.gov.*

### Section B. Questions on the Proposed Guidelines

The Commission is seeking comment on various aspects of the proposed guidelines, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Each response should cite the number and subsection of the question being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comments on any or all of the provisions in the proposed guidelines. For each provision commented on please describe (a) the

[1] 64 FR 59888 (1999).

[2] 78 FR 3972 (2013).

[3] 16 CFR part 312.

[4] *See* 16 CFR 312.11; 78 FR at 3995–96, 4012–13.

impact of the provision(s), including benefits and costs, if any, and (b) what alternatives, if any, iKeepSafe should consider, as well as the costs and benefits of those alternatives.

2. Do the provisions of the proposed guidelines governing operators' information practices provide ''the same or greater protections for children'' as those contained in Sections 312.2–312.10 of the Rule? [5] Where possible, please cite the relevant sections of both the Rule and the proposed guidelines.

3. Are the mechanisms used to assess operators' compliance with the proposed guidelines effective? [6] If not, please describe (a) whether and how the assessment mechanisms could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the proposed guidelines effective? [7] If not, please describe (a) whether and how the incentives could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the proposed guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) whether and how the dispute resolution process could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

6. Does iKeepSafe have the capability to run an effective safe harbor program? Specifically, can iKeepSafe effectively conduct initial and continuing assessments of operators' fitness for membership in its program in light of its business model and technological capabilities and mechanisms? [8] If not, please describe (a) whether and how the program could be modified to ensure that iKeepSafe could run it effectively, and (b) the costs and benefits of those modifications.

**Section C. Invitation To Comment**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 21, 2014. Write ''iKeepSafe Application for Safe Harbor, Project No. 145402'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names. If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[9] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/ikeepsafeapp,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''iKeepSafe Application for Safe Harbor, Project No. 145402'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex H), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 21, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2014–06035 Filed 3–18–14; 8:45 am]

**BILLING CODE 6750–01–P**

[5] *See* 16 CFR 312.11(b)(1); 78 FR at 4013.

[6] *See* 16 CFR 312.11(b)(2); 78 FR at 4013.

[7] *See* 16 CFR 312.11(b)(3); 78 FR at 4013.

[8] *See* 16 CFR 312.11(c)(1).

[9] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

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## FEDERAL TRADE COMMISSION

## 16 CFR Parts 500, 501, 502, and 503

## Rules, Regulations, Statements of General Policy or Interpretation and Exemptions Under the Fair Packaging and Labeling Act

**AGENCY:** Federal Trade Commission (''FTC'' or ''Commission'').

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Commission systematically reviews its rules and guides to ensure they continue to achieve their intended purpose without unduly burdening commerce. As part of this systematic review, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC's Rules, Regulations, Statements of General Policy or Interpretation and Exemptions under the Fair Packaging and Labeling Act (''FPLA'' or ''Act'').

**DATES:** Comments must be submitted by May 21, 2014.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''FPLA Rules, 16 CFR Parts 500–503, Project No. R411015'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/fairlabelingact* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to

the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Megan E. Gray, Attorney, (202) 326–3408, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Fair Packaging and Labeling Act, 15 U.S.C. 1451 *et seq.,* enacted in 1966, is designed to facilitate value comparisons and prevent unfair or deceptive packaging and labeling of many ''consumer commodities.'' Those consumer commodities are any food, device, or cosmetic,[1] and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.[2]

Several categories of products are exempt from FTC regulations under FPLA. The Act specifically excludes: (a) Meat products; (b) poultry; (c) tobacco products; (d) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or certain provisions of the Virus-Serum-Toxin Act; (e) drugs under the jurisdiction of the Food and Drug Administration; (f) alcoholic beverages; and (g) commodities subject to the Federal Seed Act.[3] Moreover, the FTC has specifically listed items it has deemed not to be consumer commodities subject to the Act, including automotive products, bottled gas for heating or cooking, Christmas light sets, cigarette lighters, clothing and other textiles, durable goods, gift ties and tapes, gift wraps, greeting cards, hardware, inks, lawn and garden supplies, magnetic recording tape, paints and kindred products, pet care supplies, safety flares, safety pins, school supplies, sewing accessories, small arms ammunition, souvenirs, stationery and writing supplies, threads, tools, toys, and typewriter ribbons.[4] Imported consumer commodities are also excluded from FTC enforcement.[5]

Section 1453 of the Act, 15 U.S.C. 1453, directs the Commission to issue regulations requiring that all ''consumer commodities'' be labeled to disclose: (a) The identity of the commodity (*e.g.,* detergent, sponges), which must appear on the principal display panel of the commodity in a conspicuous type and position so that it is easy to read and understand;[6] (b) the name and place of business of the product's manufacturer, packer, or distributor;[7] and (c) the net quantity of contents in terms of weight, measure, or numerical count, with such disclosure's placement and content in accordance with the Rules.[8] The Rules detail how units of weight or mass and measure must be stated, and require use of both U.S. measures (*e.g.,* pounds, feet, and gallons) and metric measures.[9]

Title 16 CFR parts 500 through 503 (or the ''Rules'') also specify net quantity requirements for packages containing more than one product or unit, including: (a) ''multi-unit packages,'' defined as packages containing more than one individually packaged or labeled unit of an identical commodity;[10] (b) ''variety packages,'' defined as packages containing two or more individual packages or units of similar, but not identical, commodities;[11] and (c) ''combination packages,'' defined as packages containing more than one individual package or unit of different commodities.[12]

The Act grants the FTC discretionary authority when necessary to prevent consumer deception or to facilitate value comparisons.[13] The FTC has used this authority to issue regulations prohibiting three types of representations. First, the Rules prohibit the use of the term ''cents-off'' or words of similar import on packaging, unless, among other things, the claim reflects a true savings from the seller's ordinary and customary price.[14] Second, the Rules prohibit the term ''introductory offer'' or words of similar import on packaging unless, among other things, the product is new, has been changed in a substantial respect, or is being introduced into the trade area for the first time.[15] Third, the Rules prohibit the term ''economy size'' or words of similar import on packaging unless, among other things, the product is offered at a per-unit price reduced at least five percent from the actual retail price of all other differently sized packages of the same product offered at the same time.[16]

The Commission completed its last review of the Rules in 1993, and modified the Rules in 1994.[17]

## II. Regulatory Review Program

Since 1992, the Commission's regulatory review program has systematically reviewed Commission regulations to ensure that they continue to achieve their intended goals without unduly burdening commerce. The Commission schedules its regulations and guides for review on a ten-year cycle; *i.e.,* all rules and guides are scheduled to be reviewed ten years after implementation and ten years after the completion of each review. The Commission publishes this schedule annually, with adjustments in response to public input, changes in the marketplace, and resource demands.[18]

When the Commission reviews a rule or guide, it publishes a notice in the **Federal Register** seeking public comment on the continuing need of the rule or guide as well as its costs and benefits to consumers and businesses.

[1] The Food and Drug Administration administers the FPLA with respect to foods, drugs, cosmetics, and medical devices. 15 U.S.C. 1454(a); 15 U.S.C. 1456(a).

[2] 15 U.S.C. 1459.

[3] 15 U.S.C. 1459.

[4] 16 CFR 503.2, 503.5. Many products exempt from the FTC's jurisdiction under the FPLA nevertheless fall within the purview of individual state laws. 15 U.S.C. 1461. *See also* National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality (2014 ed.) (compilation of state and federal laws and regulations pertaining to product labeling and packaging).

[5] 15 U.S.C. 1456(c).

[6] 16 CFR 500.4. The identity must be expressed either as the name required by any applicable federal law or regulation, or in the absence thereof, the common or usual name of the commodity, or, in the absence thereof, the generic name or other appropriately descriptive terms that include a statement of function of the product.

[7] 16 CFR 500.5.

[8] 16 CFR 500.6(b). The Office of Weights and Measures of the National Institute of Standards and Technology, U.S. Department of Commerce, is authorized to promote to the greatest practical extent uniformity in state and federal regulation of the labeling of consumer commodities. 15 U.S.C. 1458(a)(2).

[9] The FPLA was amended in 1992 to require use of metric measurements. 15 U.S.C. 205b. In 1994, the FTC modified its regulations accordingly. 59 FR 1872 (Jan. 12, 1994).

[10] 16 CFR 500.27.

[11] 16 CFR 500.28.

[12] 16 CFR 500.29.

[13] 15 U.S.C. 1454(c). This discretionary authority enables the FTC to address four situations: (1) Setting size standards that supplement label statements of net quantity; (2) regulating packaging that claims a product price is lower than its customary retail price; (3) requiring labels to use common names or listing ingredients in order of decreasing prominence; and preventing nonfunctional slack-fill. 15 U.S.C. 1454(c).

[14] 16 CFR 502.100.

[15] 16 CFR 502.101(b)(1). The Rules prohibit introductory offers in a trade area for a duration in excess of six months. 16 CFR 502.101(b)(3).

[16] 16 CFR 502.102.

[17] 59 FR 1872 (Jan. 12, 1994).

[18] 78 FR 30798 (May 23, 2013).

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. Therefore, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the FPLA Rules; the benefits of the Rules to consumers purchasing products covered by them; and the burdens the Rules place on businesses.

**III. Request for Comment**

The Commission seeks public comment on: (a) Regulations under Section 4 of the Fair Packaging and Labeling Act, 16 CFR Part 500; (b) Exemptions from Requirements and Prohibitions under Part 500, 16 CFR Part 501; (c) Regulations under Section 5(c) of the Fair Packaging and Labeling Act, 16 CFR Part 502; and (d) Statements of General Policy or Interpretation, 16 CFR Part 503. Specifically, the Commission solicits comments on the following questions related to the Rules.

(1) Is there a continuing need for the Rules as currently promulgated? Why or why not?

(2) What benefits have the Rules provided to, or what significant costs have the Rules imposed on, consumers? Provide any evidence supporting your position.

(3) What modifications, if any, should the Commission make to the Rules to increase their benefits or reduce their costs to consumers?

(a) Provide any evidence supporting your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, including small businesses?

(4) What impact have the Rules had in promoting the flow of truthful information to consumers or preventing the flow of deceptive information to consumers? Provide any evidence supporting your position.

(5) What benefits, if any, have the Rules provided to, or what significant costs, including costs of compliance, have the Rules imposed on businesses, including small businesses? Provide any evidence supporting your position.

(6) What modifications, if any, should be made to the Rules to increase their benefits or reduce their costs to businesses, including small businesses?

(a) Provide any evidence supporting your proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, including small businesses?

(7) Provide any evidence concerning the degree of industry compliance with the Rules. Does this evidence indicate that the Rules should be modified? If so, why and how? If not, why not?

(8) Provide any evidence concerning whether any of the Rules' provisions are no longer necessary. Explain why these provisions are unnecessary.

(9) What potentially unfair or deceptive practices concerning product packaging and labeling, falling within the FTC's purview under the Act, are occurring in the marketplace?

(a) Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrating the extent of such practices.

(b) Provide any evidence demonstrating whether such practices cause consumer injury.

(c) With reference to such practices, should the Rules be modified? If so, why and how? If not, why not?

(10) What modifications, if any, should be made to the Rules to account for current or impending changes in technology or economic conditions?

(a) Provide any evidence supporting the proposed modifications.

(b) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, including small businesses?

(11) Do the Rules duplicate or conflict with other federal, state, or local laws or rules, such as those enforced by U.S. Food and Drug Administration? If so, how?

(a) Provide any evidence supporting your position.

(b) With reference to the asserted conflicts, should the Rules be modified? If so, why and how? If not, why not?

(12) Provide any evidence concerning whether the Rules have assisted in promoting national consistency with respect to product packaging and labeling.

(13) Are there foreign or international laws, regulations, or standards with respect to product packaging and labeling that the Commission should consider as it reviews the Rules? If so, what are they?

(a) Should the Rules be modified in order to harmonize with these international laws, regulations, or standards? If so, why and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rules for consumers and businesses, including small businesses?

(c) Provide any evidence supporting your position.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 21, 2014. Write ''FPLA Rules, 16 CFR Parts 500–503, Project No. R411015'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for ensuring your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for ensuring your comment doesn't include any sensitive health information, like medical records or other individually-identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to treat your comment as confidential, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[19] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To ensure the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fairlabelingact* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also

[19] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

may file a comment through that Web site.

If you file your comment on paper, write ''FPLA Rules, 16 CFR Parts 500–503, Project No. R411015'' on your comment and on the envelope and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments received on or before May 21, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**List of Subjects in 16 CFR Parts 500 Through 503**

Labeling, Packaging and containers.

**Authority:** 15 U.S.C. 1453, 1454, 1455, 1456.

By direction of the Commission.

**Donald S. Clark**

*Secretary.*

[FR Doc. 2014–06066 Filed 3–18–14; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF THE INTERIOR

### 30 CFR Part 553

**[Docket ID: BOEM–2012–0076; MMAA104000]**

**RIN 1010–AD87**

### Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Proposed rule—extension of public comment period.

**SUMMARY:** BOEM has proposed to add a new subpart G to its regulations on Oil Spill Financial Responsibility (OSFR) for Offshore Facilities designed to increase the limit of liability for damages applicable to offshore facilities under the Oil Pollution Act of 1990 (OPA), to reflect significant increases in the Consumer Price Index (CPI) since 1990, and to establish a methodology BOEM would use to periodically adjust for inflation the OPA offshore facility limit of liability.

BOEM is publishing this update to its regulations and is soliciting public comments on the method of updates, the clarity of the rule and any other pertinent matters. The Department originally limited the rulemaking comment period to 30 days since it did not anticipate receiving significant comments on this rulemaking. Since the publication of this proposed rule on Monday, February 24, 2014 (79 FR 10056), numerous comments have been received and various groups have requested that additional time be provided for them to review and analyze the implications of this proposed rule. For that reason, the comment period is being extended by an additional 30 days. The new comment period will elapse 60 days from February 24, 2014, the original date of publication of the proposed rule.

**DATES:** Submit comments by April 25, 2014.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD87 as an identifier in your submission.

- Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BOEM–2012–0076, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEM will post all comments received during the comment period.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management; Attention: Peter Meffert, Office of Policy, Regulations and Analysis (OPRA); 381 Elden Street, MS–4001, Herndon, Virginia 20170–4817. Please reference ''Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities'' in your comments and include your name and return address so that we may contact you if we have questions regarding your submission.
- Email comments to the Department of the Interior; Bureau of Ocean Energy Management; Attention: Peter Meffert, Office of Policy, Regulations and Analysis (OPRA) at *peter.meffert@boem.gov.*

**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.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the limit of liability established by this proposed rule, or related to the limits of liability adjustment process, should be directed to Dr. Marshall Rose, Chief, Economics Division, Office of Strategic Resources, Bureau of Ocean Energy Management at 381 Elden Street, MS–4050 Herndon, Virginia 20170–4817 at (703) 787–1538 or email at *marshall.rose@boem.gov.*

Dated: March 11, 2014.

**Tommy P. Beaudreau,**

*Principal Deputy Assistant Secretary—Land and Minerals Management.*

[FR Doc. 2014–06047 Filed 3–18–14; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2014–0045]**

**RIN 1625–AA00**

### Safety Zone; 2014 International Oil Spill Conference On-Water and Aerial Technical Demonstration; Savannah River, Savannah, Georgia

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the waters of the Savannah River near the Westin Resort, Savannah, Georgia, on Wednesday, May 7, 2014. The safety zone is necessary to provide for the safety of life on navigable waters during the International Oil Spill Conference On-Water and Aerial Technical Demonstration. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Savannah or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 7, 2014. Requests for public meetings must be received by the Coast Guard by April 7, 2014.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Marine Science Technician First Class Zeke Rissman, Marine Safety Unit Savannah Prevention Department, Coast Guard; telephone (912) 652–4353 ext. 241, email *Harold.E.Rissman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

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

## A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

### *1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2014–0045 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit 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 the rule based on your comments.

### *2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2014–0045 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### *3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

### *4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to protect the demonstration participants and the general public from the hazards associated with the International Oil Spill Conference On-Water and Aerial Technical Demonstration.

## C. Discussion of Proposed Rule

On Wednesday, May 7, 2014, from 3:00 p.m. until 6:30 p.m., the Bureau of Safety and Environmental Enforcement (BSEE) will conduct the International Oil Spill Conference On-Water and Aerial Technical Demonstration on the Savannah River, near the Westin Resort, located in Savannah, Georgia.

The proposed rule would establish a fixed safety zone for all waters extending 1500 yards to either side of the vessels in the display area, near the Westin Resort in Savannah, Georgia. The International Oil Spill Conference On-Water and Aerial Technical Demonstration will take place in the area of the Westin Resort, at approximate position 32 4′ 54.9″ N/081 5′ 9.1″ W. All coordinates are North American Datum 1983. The safety zone will be enforced on Wednesday, May 7, 2014, from 3:00 p.m. until 6:30 p.m. All persons and vessels, except those persons and vessels participating in the operation, are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Savannah by telephone at 912–652–4353, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the designated area is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners,

and on-scene designated representatives.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

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

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of three and one-half hours; (2) vessel traffic in the area is expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Savannah or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Savannah or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

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

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Savannah River, Savannah, Georgia encompassed within the safety zone during the International Oil Spill Conference On-Water and Aerial Technical Demonstration on Wednesday, May 7, 2014, from 3:00 p.m. until 6:30 p.m. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule will not have a significant economic impact on a substantial number of small entities.

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

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone that will be enforced on Wednesday, May 7, 2014, from 3:00 p.m. until 6:30 p.m.. This proposed rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0045 to read as follows:

### § 165.T07–0045 Safety Zone; International Oil Spill Conference On-Water and Aerial Technical Demonstration Savannah River, Savannah, GA.

(a) *Regulated area.* The following regulated area is a fixed safety zone: all waters extending 1500 yards to either side of the vessels in the display area, near the Westin Resort in Savannah, Georgia. The International Oil Spill Conference On-Water and Aerial Technical Demonstration will take place in the area of the Westin Resort, at approximate position 32 4′ 54.9″ N/081 5′ 9.1″ W. All coordinates are North American Datum 1983.

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

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Savannah or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Savannah by telephone at (912) 247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Savannah or a designated representative.

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

(d) *Effective date.* This rule will be enforced on Wednesday, May 7, 2014, from 3 p.m. until 6:30 p.m.

Dated: March 3, 2014.

**J. B. Loring,**

*Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Savannah.*

[FR Doc. 2014–05943 Filed 3–18–14; 8:45 am]

BILLING CODE 9110–04–P

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## PRESIDIO TRUST

## 36 CFR Part 1002

## Public Use Limit on Commercial Dog Walking

**AGENCY:** The Presidio Trust.

**ACTION:** Proposed interim rule and request for comments.

**SUMMARY:** The Presidio Trust (Trust) is proposing a public use limit on persons who are walking four or more dogs at one time in Area B of the Presidio of San Francisco (Presidio) for consideration (Commercial Dog Walkers). The limit would require any such Commercial Dog Walker in Area B to possess a valid commercial dog walking permit obtained from the National Park Service (NPS), Golden Gate National Recreation Area (GGNRA).

Commercial Dog Walkers would be required to comply with the terms and conditions of the GGNRA permit as well as those rules and regulations otherwise applicable to Area B of the Presidio. The permit would allow a maximum of six dogs per Commercial Dog Walker at any one time. The GGNRA commercial dog walking permit requirement is a compendium amendment being proposed for all GGNRA sites in San Francisco and Marin County that allow dog walking, and would be implemented concurrently with the Trust's proposed rule. Both are interim actions and would remain in effect until the final special regulation for dog walking in the GGNRA is promulgated as anticipated in late 2015, at which time the Trust expects that it will adopt a final rule following public input and comment.

**DATES:** Public comment on this proposal will be accepted through May 5, 2014.

**ADDRESSES:** Electronic comments may be sent to *commercialdogwalking@presidiotrust.gov.* Written comments may be mailed or hand delivered to John Pelka, The Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, CA 94129. All written comments submitted to the Trust will be considered, and this proposed interim rule may be modified accordingly. The final decision of the Trust will be published in the **Federal Register**.

*Public Availability of Comments:* If individuals submitting comments request that their address or other contact information be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. The Trust will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

**FOR FURTHER INFORMATION CONTACT:** Presidio Trust Office of External Affairs, 415.561.5300 or *commercialdogwalking@presidiotrust.gov.*

**SUPPLEMENTARY INFORMATION:** The 1,491-acre former U.S. Army base known as

the Presidio is part of and is at the center of the GGNRA. Administrative jurisdiction over the Presidio is divided between the Trust and the NPS. The Trust oversees the interior 1,100 acres, Area B, and the NPS oversees approximately 300 acres along the waterfront, Area A, of the national park site. Commercial Dog Walkers have been regularly using the Presidio for at least ten years. According to the most recent estimates by the San Francisco Professional Dog Walkers Association, the City and County of San Francisco (City) has roughly 300 Commercial Dog Walkers. Trust staff estimates that between ten and twenty of these Commercial Dog Walkers walk their dogs within Area B during any given time of day, typically bringing between four and ten dogs or more at a time. Most often-used areas include the corridor adjoining West Pacific Avenue from the Broadway Gate to the 14th Avenue Gate, as well as the areas east of the Ecology Trail in the Tennessee Hollow Watershed. By both direct observation and through reports from the public, the Trust is aware that dogs brought into the Presidio in these numbers have been responsible for damage to resources, threats to public safety, and visitor conflict.

To ensure that Commercial Dog Walkers act responsibly, effective July 1, 2013, the City passed legislation that requires Commercial Dog Walkers with four or more dogs, limited to eight dogs total, to carry a valid annually renewed dog walking permit issued by the San Francisco Department of Animal Care & Control (see *http://www.sfgov2.org/index.aspx?page=3857*). The law is enforced on all City property under the San Francisco Department of Recreation and Parks, the Port of San Francisco, and the San Francisco Public Utilities Commission, but does not apply to federal property within the geographic limits of the City, including Area B. Currently, the Trust does not impose restrictions specific to Commercial Dog Walkers in Area B. Since last year, the Trust has witnessed a number of Commercial Dog Walkers who would otherwise fall under the City's legislation, walking their dogs in Area B in order to avoid the permit fees, requirements, and limit on the number of dogs they may walk on City lands covered by the City law.

Under 36 CFR 1001.5, the Trust may impose reasonable public use limits in Area B, given a determination that such action is necessary to maintain public health and safety, to protect environmental or scenic values, to protect natural or cultural resources, or to avoid conflict among visitor use activities. On November 21, 2012, in direct response to the City's Commercial Dog Walker regulations, the Trust requested public comment on a proposed public use limit on Commercial Dog Walkers (77 FR 69785). The limit would have required Commercial Dog Walkers in Area B to possess a valid dog walking permit obtained from the City. Commercial Dog Walkers would have needed to comply with the terms and conditions of the City permit as well as those rules and regulations otherwise applicable to Area B. In proposing the public use limit, the Trust felt that the possession of a valid City permit, which sets basic insurance, training, and safety standards and limits the number of dogs a Commercial Dog Walker may walk at once in City parks and other designated areas, would have assisted in implementing its responsibilities, including the avoidance of conflicts among the many different users of the Presidio, equitable allocation and use of facilities, ensuring public safety, and protecting resources.

The initial 65-day comment period for the proposed use limit was extended by 30 days to February 25, 2013 at the request of the public. By the close of the public comment period, the Trust had received 257 individual comments, including nine oral comments provided at a public Trust Board of Directors meeting on November 29, 2012. Roughly one-half (51 percent) of the comments received expressed support for the public use limit, and roughly one-half (49 percent) were opposed. Commenters who opposed the proposed use limit, including four conservation organizations, were largely ''dissatisfied with the status quo'' of the presence of Commercial Dog Walkers in the Presidio and wished to see the activity prohibited. They recommended that the Trust should not adopt the proposed use limit until such time as GGNRA published its own policies and requirements on Commercial Dog Walkers. They further requested the Trust to work in partnership with GGNRA and ''come out together with one system clearly defined.'' They urged that ''a single, clear rule for federal park properties that can be widely broadcast to dog walkers in the area will allow for more efficient administration, greater compliance, and reduced impacts to Trust resources.'' One dog owner group also supported deferring implementation of the proposed rule until such time as GGNRA adopted its rule.

In its February 25, 2013 letter to the Trust, the GGNRA stated its support for the Trust's public use limit. The GGNRA disagreed, however, with the number of dogs allowed under the City permit (up to eight), and argued that a limit of six dogs is more reasonable, and is consistent with the NPS's understanding of the standard practice for the majority of local land management agencies that regulate commercial dog walking. In reaction to the City's program and the Trust's proposal, the GGNRA stated it would consider enacting an interim commercial dog walking permit system this year, before completing its dog management planning process and rulemaking. Given the Trust's and the GGNRA's shared management responsibilities within the Presidio, the GGNRA asked the Trust to consider adopting its interim permit system rather than that being implemented by the City.

On May 30, 2013, the Trust announced on its Web site that it supported the GGNRA's proposed intention to move forward at this time to create and implement an interim permit system to regulate commercial dog walking within the park. After having examined all public comments and considered the new information provided by the GGNRA, the Trust agreed to suspend its own decisions regarding the regulation of commercial dog walking. Before taking any action, the Trust also offered to provide the public with an additional opportunity to comment.

On March 14, 2014, the GGNRA provided 30-day public notice of its intended interim change to its compendium requiring that Commercial Dog Walkers in all San Francisco and Marin County sites of the GGNRA where dog walking is allowed, including Area A, obtain a permit from the park (see *https://parkplanning.nps.gov/commercialdogwalking*). Permits would allow a maximum of six dogs per Commercial Dog Walker, and require a business license and proof of liability insurance and dog-handling training through existing training courses, such as those offered by Marin Humane or San Francisco SPCA. Permit holders must also abide by all NPS regulations. The GGNRA action is an interim compendium amendment (2014 Superintendent's Compendium of Designations, Closures, Permit Requirements, and Other Restrictions Imposed under Discretionary Authority) and would remain in effect until late 2015, at which time the final special regulation for dog walking in the GGNRA, which will address commercial dog walking, is promulgated. The GGNRA involved the Trust throughout the development of the interim commercial permit requirement.

Aligning with the City's rather than the GGNRA permit system could be considered a less restrictive measure reasonably available to the Trust due to the City's higher limit on the maximum number of dogs allowed (eight), which poses less of a financial burden on Commercial Dog Walkers. In a local newspaper article on the subject, the author of the City's legislation and City supervisor said that it was preferable to be less restrictive in light of the City's ''huge population of dog owners'' and the fact that ''many of them don't have yards'' (see *http://www.sfchronicle.com/bayarea/article/Commercial-dog-walkers-must-follow-new-law-4665243.php*). However, the NPS has expressed concern that Commercial Dog Walkers could not consistently control more than six dogs under voice and sight control. And while the City's Department of Animal Care & Control enforces eight dogs as the limit for one Commercial Dog Walker, in its Commercial Dog Walker Informational Pamphlet, it recommends six as a maximum number (see *http://www.sfgov2.org/Modules/ShowDocument.aspx?documentid=1419*). GGNRA research on the maximum number reveals that the City's regulation allowing up to eight dogs is an outlier among jurisdictions around the country. As caretaker of the national park site and while mindful of the importance of equitably allocating facilities within the park, the Trust must place a higher priority on avoiding conflict among visitor uses, protection of environmental values, natural resources, and cultural resources and maintaining health and safety over a minor difference (six dogs versus eight) in addressing City residents' particular needs in this area and affecting the individual earnings of Commercial Dog Walkers (or otherwise having them choose to go elsewhere to walk their dogs). In addition, adopting the City's less restrictive measure in lieu of the GGNRA interim permit system would engender public confusion given the Presidio's presence within the boundaries of the GGNRA, the similar visitor experience mandates of the Trust and the NPS, and the adjacent jurisdictions of the two land management agencies with an unmarked boundary within the Presidio.

The Trust's limitation would go into effect on the operative date of the GGNRA's interim commercial dog walking permit requirement, and is anticipated to remain in effect until the GGNRA's interim action is supplanted by a special regulation for dog walking in the GGNRA, which will address commercial dog walking. Prior to implementation, the Trust would conduct a public outreach and education campaign to alert Commercial Dog Walkers and others about the use limitation. The Trust would also post signs and provide handouts to notify park users of the limitation in areas where dog walking is a particularly high-use activity.

*Regulatory Impact:* The proposed interim rule would not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. The proposed interim rule would not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy would result from adoption of the proposed interim rule. Because the rule is not ''economically significant,'' it is not subject to review by the Office of Management and Budget under Executive Order 12866 or Executive Order 13536. The proposed interim rule is not a ''major rule'' under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.*

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that the proposed interim rule would not have a significant economic effect on a substantial number of small entities. The economic effect of the rule is local in nature and negligible in scope, restricting only a single use (commercial dog walking) in a limited geographic area (Area B of the Presidio occupies less than four percent of the City and County of San Francisco's total acreage) for purposes of protecting public health and safety and the natural environment. There would be no loss of significant numbers of jobs, as Commercial Dog Walkers would retain the flexibility to avoid the proposed restriction and permit fees by opting to use one or more of the available open space lands maintained by the San Francisco Park and Recreation Department, the Port of San Francisco, and the San Francisco Public Utilities Commission. Among these lands are 28 specifically designated off-leash park areas for dogs throughout the City, including the Mountain Lake Park Dog Play Area that is immediately adjacent to Area B (see *http://sfrecpark.org/parks-open-spaces/dog-play-areas-program/* for a location map for specified areas and for information on the process for establishment of additional off-leash areas within the City's park system).

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that the proposed interim rule would not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

*Environmental Impact:* The National Environmental Policy Act (NEPA) mandates that federal agencies responsible for preparing environmental analyses and documentation do so in cooperation with other governmental agencies. The Trust is a cooperating agency with special expertise for the GGNRA proposed interim commercial dog walking permit requirement (as well as the special regulation for dog walking) under the NEPA and the Council on Environmental Quality regulations (an agency is considered to have special expertise when it has a related ''statutory responsibility, agency mission, or . . . program experience'' (40 CFR 1508.26)). The regulatory actions by GGNRA and the Trust regarding interim commercial dog management for Areas A and B are substantially the same. As a cooperating agency, the Trust will support the GGNRA in the development of information and the preparation of environmental analyses to determine whether the actions would have a significant effect on the environment.

*Other Authorities:* The Trust has drafted and reviewed the proposed rule in light of Executive Order 12988 and has determined that it meets the applicable standards provided in secs. 3(a) and (b) of that Order.

**List of Subjects in 36 CFR Part 1002**

National parks, Natural resources, Public lands, Recreation and recreation areas.

For the reasons set forth in the preamble, part 1002 of Title 36 of the Code of Federal Regulations is proposed to be amended as an interim action as set forth below:

## PART 1002—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

■ 1. The authority citation for part 1002 continues to read as follows:

**Authority:** 16 U.S.C. 460bb note.

■ 2. Add § 1002.6 to read as follows:

### § 1002.6 Commercial Dog Walking.

(a) The walking of more than six dogs at one time by any one person for consideration (commercial dog walking) is prohibited within the area administered by the Presidio Trust.

(b) The walking of more than three dogs, with a limit of six dogs, at one time by any one person for consideration (commercial dog walking) within the area administered by the Presidio Trust, where dog walking is otherwise allowed, is hereby authorized provided that:

(1) That person has a valid commercial dog walking permit issued by Golden Gate National Recreation Area (GGNRA);

(2) The walking of more than three dogs, with a limit of six dogs, is done pursuant to the conditions of that permit; and

(3) The commercial dog walker badge issued to the permittee by the GGNRA shall be visibly displayed at all times as directed in the permit while the permittee is engaging in commercial dog walking activities, and shall be provided upon request to any person authorized to enforce this provision.

Dated: March 13, 2014.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 2014–06032 Filed 3–18–14; 8:45 am]

BILLING CODE 4310–4R–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2013–0415; FRL 9908–15-Region 5]**

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Evansville Area; 1997 Annual Fine Particulate Matter Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a request by Indiana to revise the 1997 annual fine particulate matter maintenance air quality state implementation plan (SIP) for the Evansville/Southwestern, Indiana Area to replace onroad emissions inventories and motor vehicle emissions budgets (budgets) with inventories and budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) emissions model. Indiana submitted the SIP revision request for the Evansville, Indiana Area on July 2, 2013.

**DATES:** Comments must be received on or before April 18, 2014. Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0415, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *blakley.pamela@epa.gov*
3. Fax: (312) 692–2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353–8777, *maietta.anthony@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. 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. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: March 4, 2014.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2014–05904 Filed 3–18–14; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2013–0657; FRL–9907–99–Region 9]**

### Approval and Promulgation of Implementation Plans; State of Arizona; Payson $PM_{10}$ Air Quality Planning Area

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Payson portion of the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality on January 23, 2012. This revision consists of the second ten-year maintenance plan for the Payson air quality planning area for the national ambient air quality standards (NAAQS) for particulate matter less than 10 microns in diameter ($PM_{10}$). EPA is proposing to approve this plan based on the conclusion that the plan adequately provides for continued maintenance of the $PM_{10}$ NAAQS in the Payson area through 2022. EPA is proposing this action pursuant to those provisions of the CAA that obligate the Agency to take action on submittals of revisions to SIPs. The effect of this action would be to make the State's continuing commitments with respect to maintenance of the $PM_{10}$ NAAQS in the Payson area federally enforceable for another ten years.

**DATES:** Any comments on this proposal must arrive by April 18, 2014.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2013–0657, 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 94105–3901. 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:** Nancy Levin, EPA Region IX, (415) 942–3848, *levin.nancy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This proposal addresses the *Final Update of the Limited Maintenance Plan for the Payson* $PM_{10}$ *Maintenance Area* (December 2011) (''Second Ten-Year Limited Maintenance Plan'') submitted as a revision to the Arizona State Implementation Plan (SIP) on January 23, 2012 by the Arizona Department of Environmental Quality. In the Rules and Regulations section of this **Federal Register,** we are approving the Second Ten-Year Limited Maintenance Plan for the Payson area in a direct final action without prior proposal because we believe this SIP revision is 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 comment 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: March 5, 2014.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2014–05667 Filed 3–18–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 45 CFR Part 170

**RIN 0991–AB92**

## Voluntary 2015 Edition Electronic Health Record (EHR) Certification Criteria; Interoperability Updates and Regulatory Improvements; Correction

**AGENCY:** Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This notice makes the following corrections to the proposed rule that appeared in the February 26, 2014 **Federal Register** entitled ''Voluntary 2015 Edition Electronic Health Record (EHR) Certification Criteria; Interoperability Updates and Regulatory Improvements'': Corrects the preamble text and gap certification table for four certification criteria that were omitted from the list of certification criteria eligible for gap certification for the 2015 Edition EHR certification criteria; and provides information on inactive web links that appear in the proposed rule.

**DATES:** Comments on the proposed rule published February 26, 2014, at 79 FR 10880, continue to be accepted until no later than 5 p.m. on April 28, 2014.

**FOR FURTHER INFORMATION CONTACT:** Steven Posnack, Director, Federal Policy Division, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology, 202–690–7151.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In FR Doc. 2014–03959, the proposed rule entitled ''Voluntary 2015 Edition Electronic Health Record (EHR) Certification Criteria; Interoperability Updates and Regulatory Improvements'' (79 FR 10880) (hereinafter referred to as the 2015 Edition proposed rule), four 2015 Edition EHR certification criteria were omitted from the list of certification criteria eligible for gap certification. There are also inactive web links included in the preamble. These errors are identified and corrected in this correction notice.

### II. Summary of Errors

We define ''gap certification'' at 45 CFR 170.502 as ''the certification of a previously certified Complete EHR or EHR Module(s) to: (1) [a]ll applicable new and/or revised certification criteria adopted by the Secretary at subpart C of [part 170] based on the test results of a NVLAP-accredited testing laboratory; and (2) [a]ll other applicable certification criteria adopted by the Secretary at subpart C of [part 170] based on the test results used to previously certify the Complete EHR or EHR Module(s)'' (for further explanation, see 76 FR 1307–1308). Our gap certification policy focuses on the differences between certification criteria that are adopted through rulemaking at different points in time. This allows EHR technology to be certified to only the differences between certification criteria editions rather than requiring EHR technology to be fully retested and recertified to certification criteria that remain ''unchanged'' from one edition to the next and for which previously acquired test results are sufficient. Under our gap certification policy, ''unchanged'' certification criteria (see 77 FR 54248 for further explanation) are eligible for gap certification, and each ONC-Authorized Certification Body (ONC–ACB) has discretion over whether it will provide the option of gap certification.

In the 2015 Edition proposed rule, we noted whether a proposed 2015 Edition EHR certification criterion was ''eligible'' or ''ineligible'' for gap certification at the beginning of each section of the preamble that discussed each certification criterion. We also provided a table that cross-walked ''unchanged'' 2015 Edition EHR certification criteria to the corresponding 2014 Edition EHR certification criteria (79 FR 10916, Table 4). In the preamble section for each certification criterion and in the gap certification table (Table 4), we omitted four certification criteria that are eligible

for gap certification because they are ''unchanged'' based on our description of what constitutes an ''unchanged'' criterion. These criteria are:

- For the inpatient setting only § 170.315(a)(2) Computerized provider order entry—laboratory (79 FR 10887);
- § 170.315(h)(1) Transmit—Applicability Statement for Secure Health Transport (79 FR 10914);
- § 170.315(h)(2) Transmit—Applicability Statement for Secure Health Transport and XDR/XDM for Direct Messaging (79 FR 10914);
- § 170.315(h)(3) Transmit—SOAP Transport and Security Specification and XDR/XDM for Direct Messaging (79 FR 10914).

In addition, some of the web links in the preamble have become inactive since the proposed rule was published.

## III. Correction of Errors

In FR Doc. 2014–03959 of February 26, 2014 (79 FR 10880), make the following corrections:

1. On page 10887, first column, line 15, ''Ineligible.'' is corrected to read ''Eligible for the inpatient setting. Ineligible for the ambulatory setting.''
2. On page 10914, second column, line 24, ''Ineligible'' is corrected to read ''Eligible.''
3. On page 10914, second column, line 50, ''Ineligible'' is corrected to read ''Eligible.''
4. On page 10914, third column, line 12, ''Ineligible'' is corrected to read ''Eligible.''
5. On page 10916, Table 4—Gap Certification Eligibility for 2015 Edition EHR Certification Criteria is revised to read as follows:

TABLE 4—GAP CERTIFICATION ELIGIBILITY FOR 2015 EDITION EHR CERTIFICATION CRITERIA

| 2015 Edition | | 2014 Edition | |
|---|---|---|---|
| Regulation section | Title of regulation paragraph | Regulation section | Title of regulation paragraph |
| § 170.315(a)(1) | Computerized physician order entry—medications. | § 170.314(a)(1) | Computerized Provider Order Entry. |
| § 170.315(a)(2) Inpatient setting only. | Computerized physician order entry—laboratory. | | |
| § 170.315(a)(3) | Computerized physician order entry—radiology/imaging. | | |
| § 170.315(a)(4) | Drug-drug, drug-allergy interaction checks. | § 170.314(a)(2) | Drug-drug, drug-allergy interaction checks. |
| § 170.315(a)(6) | Vital signs, BMI, & growth charts | § 170.314(a)(4) | Vital signs, BMI, & growth charts. |
| § 170.315(a)(7) | Problem list | § 170.314(a)(5) | Problem list. |
| § 170.315(a)(8) | Medication list | § 170.314(a)(6) | Medication list. |
| § 170.315(a)(9) | Medication allergy list | § 170.314(a)(7) | Medication allergy list. |
| § 170.315(a)(12) | Drug-formulary checks | § 170.314(a)(10) | Drug-formulary checks. |
| § 170.315(a)(13) | Smoking status | § 170.314(a)(11) | Smoking status. |
| § 170.315(a)(14) | Image results | § 170.314(a)(12) | Image results. |
| § 170.315(a)(16) | Patient list creation | § 170.314(a)(14) | Patient list creation. |
| § 170.315(a)(18) | Electronic medication administration record. | § 170.314(a)(16) | Electronic medication administration record. |
| § 170.315(a)(19) | Advance directives | § 170.314(a)(17) | Advance directives. |
| § 170.315(b)(3) | Electronic prescribing | § 170.314(b)(3) | Electronic prescribing. |
| § 170.315(c)(1)–(3) | Clinical quality measures | § 170.314(c)(1)–(3) | Clinical quality measures. |
| § 170.315(d)(1) | Authentication, access control, & authorization. | § 170.314(d)(1) | Authentication, access control, & authorization. |
| § 170.315(d)(3) | Audit report(s) | § 170.314(d)(3) | Audit report(s). |
| § 170.315(d)(4) | Amendments | § 170.314(d)(4) | Amendments. |
| § 170.315(d)(5) | Automatic log-off | § 170.314(d)(5) | Automatic log-off. |
| § 170.315(d)(6) | Emergency access | § 170.314(d)(6) | Emergency access. |
| § 170.315(d)(7) | End-user device encryption | § 170.314(d)(7) | End-user device encryption. |
| § 170.315(d)(8) | Integrity | § 170.314(d)(8) | Integrity. |
| § 170.315(d)(9) | Accounting of disclosures | § 170.314(d)(9) | Accounting of disclosures. |
| § 170.315(e)(3) | Secure messaging | § 170.314(e)(3) | Secure messaging. |
| § 170.315(f)(1) | Immunization information | § 170.314(f)(1) | Immunization information. |
| § 170.315(f)(3) # | Transmission to public health agencies—syndromic surveillance. | § 170.314(f)(3) # | Transmission to public health agencies—syndromic surveillance |
| § 170.315(f)(5) | Cancer case information | § 170.314(f)(5) | Cancer case information. |
| § 170.315(g)(4) | Quality management system | § 170.314(g)(4) | Quality management system. |
| § 170.315(h)(1) | Transmit—Applicability Statement for Secure Health Transport. | § 170.314(b)(2)(ii)(A) | Transitions of care—create and transmit transition of care/referral summaries. |
| § 170.315(h)(2) | Transmit—Applicability Statement for Secure Health Transport and XDR/XDM for Direct Messaging | § 170.314(b)(2)(ii)(B) | Transitions of care—create and transmit transition of care/referral summaries. |
| § 170.315(h)(3) | Transmit—SOAP Transport and Security Specification and XDR/XDM for Direct Messaging | § 170.314(b)(2)(ii)(C) | Transitions of care—create and transmit transition of care/referral summaries. |

# If certified to the revised 2014 Edition version of this criterion after the effective date of the 2015 Edition Final Rule. For further information on this distinction, please see the gap certification discussion under the ''Transmission to Public Health Agencies—Syndromic Surveillance'' in section III.A of this preamble.

*Inactive Web Links*

Inactive web links included in the 2015 Edition proposed rule are identified on ONC's Standards and Certification Regulations page with an explanation and/or corrected link (*http://www.healthit.gov/policy-researchers-implementers/standards-and-certification-regulations).*

Dated: March 13, 2014.

**Jennifer M. Cannistra,**

*Executive Secretary to the Department.*

[FR Doc. 2014–06041 Filed 3–17–14; 11:15 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 131206999–4206–01]**

**RIN 0648–BD83**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 20A

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 20A to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (CMP) in the Gulf of Mexico and Atlantic Region (FMP) (Amendment 20A), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). If implemented, this rule would restrict sales of king and Spanish mackerel caught under the bag limit (those fish harvested by vessels that do not have a valid commercial vessel permit for king or Spanish mackerel and are subject to the bag limits specified in 50 CFR 622.382) and remove the income qualification requirements for king and Spanish mackerel commercial vessel permits. The purpose of this rule is to obtain more accurate landings data while ensuring the CMP fishery resources are utilized efficiently.

**DATES:** Written comments must be received on or before May 5, 2014.

**ADDRESSES:** You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2013–0168'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0168,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the documents supporting this proposed rule, which include an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/index.html.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The coastal migratory pelagic (CMP) fishery in the Gulf of Mexico (Gulf) and the Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### Management Measures Contained in the Proposed Rule

Currently, no Federal permits are required to sell CMP species, although commercial vessel permits are required to exceed the bag limit for king and Spanish mackerel. All fish harvested in Federal waters that are sold are considered commercial harvest and count towards a species' commercial quota, whether or not the fisherman has a Federal commercial permit. The Councils and NMFS are concerned that landings from recreational trips that are sold may contribute to the commercial quota and lead to early closures in the commercial sector. Reducing the sale of fish caught under the bag limit should improve the accuracy of data by reducing ''double counting,'' *i.e.,* harvest from a single trip that is counted towards both the commercial quota and recreational allocation. This practice occurs when the same catches are reported through recreational surveys and commercial trip tickets and logbooks.

For the Gulf region, this rule proposes to prohibit the sale of bag-limit-caught king and Spanish mackerel, except in two limited circumstances. First, bag-limit-caught king and Spanish mackerel could be sold when harvested during a for-hire trip on a vessel with both a Gulf Charter Vessel/Headboat Coastal Migratory Pelagic Fish Permit and either a King Mackerel Commercial Permit or a Spanish Mackerel Commercial Permit, as appropriate to the species harvested or possessed. The purpose of this exception is to preserve a historic practice that is important to Gulf charter and headboat businesses. Second, king and Spanish mackerel harvested during state-permitted tournaments may be donated to a dealer who has a state or Federal permit and then sold by that dealer, if the proceeds are donated to charity. Dealers receiving such fish must report them as tournament-caught fish. In the Gulf, sales from dually-permitted vessels or tournaments would only occur in Florida, because all other Gulf states prohibit the sale of any bag-limit-caught fish.

Currently, there is no Federal dealer permit for king or Spanish mackerel. However, a proposed rule published on January 2, 2014 (79 FR 81) for the Generic Dealer Amendment includes an action to implement a Gulf and South Atlantic dealer permit, which would be required for king and Spanish mackerel dealers. Therefore, if the Generic Dealer Amendment is approved and a final rule is implemented, there would be a Federal dealer permit for king and Spanish mackerel. In addition, the

proposed rule for the Generic Dealer Amendment includes a restriction stating that a federally permitted dealer must first receive fish only from a federally permitted vessel. This provision would be codified at § 622.386(c), and provides: ''Coastal migratory pelagic fish harvested in or from the Gulf or South Atlantic EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.370(c)(1), only from a vessel that has a valid Federal commercial vessel permit, as required under § 622.370(a), or a charter vessel/headboat permit for coastal migratory pelagic fish, as required under § 622.370(b).''

Amendment 20A and this proposed rule would allow a federally permitted dealer to receive tournament-caught fish and then sell those fish as long as the proceeds are donated to a charity. Therefore, if the final rule for the Generic Dealer Amendment is implemented, an exception to the restriction in § 622.386(c) would be added in the final rule for Amendment 20A, allowing dealers to sell tournament-caught fish and donate the proceeds to a charity. Specifically, paragraph § 622.386(e) would be amended to provide: ''Federally permitted dealers who accept donated king or Spanish mackerel under this section are exempt from the restrictions in section (c) of this paragraph, and can accept these fish from non-federally permitted vessels.''

For the Atlantic region, this rule proposes to prohibit the sale of all bag-limit-caught king and Spanish mackerel, except those harvested during a state-permitted tournament. As in the Gulf, king and Spanish mackerel harvested during state-permitted tournaments may be donated to a dealer who has a state or Federal permit and then sold by that dealer, if the proceeds are donated to charity. Dealers receiving such fish must report them as tournament-caught fish.

In addition, the rule proposes to remove the income qualification requirements for king and Spanish mackerel commercial vessel permits. Currently, to obtain or renew a king or Spanish mackerel commercial vessel permit, a minimum amount of the applicant's earned income must be derived from commercial fishing. These requirements are difficult to enforce, and have recently been removed as requirements to obtain or renew a Gulf reef fish permit. No other Federal permit in the Southeast Region has an income qualification requirement except the spiny lobster permit, which mirrors requirements by Florida. This action would not affect the number of king mackerel permits issued, which are limited access, but could increase the number of Spanish mackerel permits issued, which are open access. Eliminating the income qualification requirements would afford more flexibility to fishermen by allowing them to earn a larger portion of income from non-fishing occupations.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendment 20A, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The purpose of this rule is twofold: (1) to reduce current sales of Spanish and king mackerel harvested in Federal waters by vessels without Federal commercial permits for those species and by vessels with these permits during for-hire fishing trips, and (2) to eliminate current income requirements for Federal commercial king and Spanish mackerel permits. Another action to reduce the number of Federal commercial king mackerel permits, which are limited access, was considered but rejected in favor of the status quo.

Reducing sales of bag-limit-caught king and Spanish mackerel harvested in Federal waters of the Gulf and Atlantic Region is needed to reduce double-counting of landings. Double-counting occurs because landings of for-hire vessels are included in the recreational count and, when sold, also count against the commercial quota. Inclusion in the commercial count can contribute to earlier closures of the commercial sector and erroneous estimates of landings that impact stock assessments. Eliminating current income requirements is needed to end an unnecessary barrier to entry in the fishery. Presently, a non-owner operator of a permitted vessel or any applicant for a new Spanish mackerel or transferred king mackerel permit cannot qualify for either permit if the applicant's income from fishing is less than $10,000, or less than 25 percent of the applicant's income from all sources for 1 out of the past 3 years. Removing the current income requirements may increase participation in this fishery, and would allow permit holders greater flexibility in obtaining non-fishery income.

The Magnuson-Stevens Act provides the statutory basis for the proposed action.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The rule would apply directly to businesses that operate in the finfish fishing (NAICS 114111) and scenic sightseeing water transportation industries (NAICS 487201), the latter of which includes for-hire fishing. The prohibition of bag-limit sales would directly affect all businesses: (1) In the finfish and for-hire fishing industries that sell king and Spanish mackerel harvested in Federal waters of the Gulf and Atlantic Region and landed by vessels without valid Federal commercial permits for the species; and (2) in the for-hire fishing industry that sell king and Spanish mackerel harvested in Federal waters of the Atlantic Region and landed by vessels with the valid Federal commercial permits. The elimination of the income requirements for Federal king and Spanish mackerel commercial permits would directly affect businesses in both industries that presently possess or aspire to possess at least one of the two permits.

On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). That rule increased the size standard for commercial finfish harvesters from $4.0 million to $19.0 million in annual receipts. The number of small businesses that operate in the finfish fishing industry and own or operate commercial fishing vessels that harvest king and Spanish mackerel in Federal waters without the respective commercial permits is unknown. Sales of bag-limit quantities of king and Spanish mackerel harvested by these vessels would represent incidental landings. However, NMFS estimates that a small business in the finfish fishing industry without the Federal commercial permits and with an average size commercial vessel and 3-person crew could lose up to $99 to $149 per trip from the prohibition of bag-limit sales of king mackerel and up to $124

per trip from the prohibition of bag-limit sales of Spanish mackerel. To avoid the losses of sales of Spanish mackerel, a small commercial fishing business could purchase a Federal commercial Spanish mackerel permit for $25 each year. To avoid losses of sales of king mackerel, the same small business in the finfish fishing industry would have to acquire a Federal commercial king mackerel permit from an existing permit holder. A query of transferred king mackerel permits from January 1, 2008, through June 2013, was conducted and reported costs of acquiring a permit were found to range from $0 to $10,000 per transferred permit, with a median of $3,625 and average of $2,860. Given that cost, a small business in the finfish fishing industry that incidentally catches king mackerel in Federal waters likely would not choose to purchase a permit that is used to commercially target the species.

The small business size standard for the scenic sightseeing water transportation industry is $7.0 million in annual receipts. For-hire fishing vessels that harvest king and Spanish mackerel in Federal waters of the Gulf and Atlantic Region are required to have Federal Gulf CMP and South Atlantic CMP charter/headboat permits, respectively. NMFS estimates that up to 79 percent (1,153) of the for-hire vessels that have a Federal South Atlantic charter/headboat CMP permit, and up to 91 percent (1,234) of the for-hire vessels that have a Federal Gulf CMP permit, lack valid Federal commercial king mackerel permits and may land and sell king mackerel in bag-limit quantities. From that, NMFS estimates that as many as to 2,387 small for-hire fishing businesses could be adversely affected by the prohibition on sales of king mackerel caught without a valid Federal commercial king mackerel permit. NMFS expects that significantly less than 2,387 small businesses could be adversely affected by the prohibition on sales of Spanish mackerel without a valid Federal commercial Spanish mackerel permit, because it is an open access permit. As many as 307 small for-hire fishing businesses with a Federal Atlantic charter/headboat CMP permit could lose sales of king and Spanish mackerel that were harvested during a for-hire trip.

NMFS estimates that a small for-hire fishing business without valid Federal commercial king and Spanish mackerel permits could lose revenues from sales of king mackerel of as much as $33 to $49.5 per angler onboard, and of Spanish mackerel as much as $41.25 per angler onboard, per for-hire trip., Presuming then an average of 3 anglers on aboard, NMFS estimates a for-hire fishing vessel could lose, on average, as much as $99 to $149 per trip from the prohibition of bag-limit sales of king mackerel and $124 per trip from the prohibition of bag-limit sales of Spanish mackerel. Those figures would also apply to small for-hire fishing businesses with the valid Federal commercial permits that operate in Federal waters of the Atlantic Region. The figures, however, presume anglers catch and land marketable sizes and the maximum amount allowed, do not take any mackerel home with them and, instead, give all to the vessel's crew who, in turn, sell it. Small for-hire fishing businesses that operate and sell king and Spanish mackerel in the Gulf Council's jurisdiction could avoid those losses by acquiring the Federal commercial permits for the species, while those that operate and sell the species in the South Atlantic Council's jurisdiction could not, although some may be able to reduce losses by relocating to the Gulf Council's jurisdiction.

Eliminating the income requirements for the Federal commercial king and Spanish mackerel permits would apply to all of the small businesses that presently possesses or seek to possess one of the 1,658 valid Federal commercial king mackerel permits, and any that presently possesses one of the 1,285 Spanish mackerel permits or seeks to acquire one. Eliminating the income requirements would generate a beneficial economic impact because it would eliminate the time and other costs currently incurred by small businesses to demonstrate that they meet the income requirements to obtain a permit. It would also benefit any small business, such as a new business, that cannot satisfy the income requirements because its income from fishing is either less than $10,000 or less than 25 percent of its income from all sources during one of the three calendar years preceding the application.

The above prohibitions on sales of king and Spanish mackerel would have an indirect effect on small businesses that operate in the fish and seafood merchant wholesales industry (NAICS 424460), which has a small business size standard of 100 employees. It is unknown how many of these small businesses could be indirectly affected, because a Federal dealer license is not required to purchase king and Spanish mackerel harvested and landed by vessels operating in Federal waters. However, 573 fish and seafood wholesale establishments were located in the Gulf and South Atlantic States in 2011.

The alternative to allow sales of king and Spanish mackerel caught by anglers aboard for-hire fishing vessels with Federal commercial king and Spanish mackerel permits in the South Atlantic Council's jurisdiction was considered, but rejected, although it would have a smaller adverse economic impact on small businesses in the for-hire fishing industry than the preferred alternative. However, this rejected alternative would not reduce double-counting of landings, and therefore would not meet the Council's objective of improving landings data.

The status quo alternative that allows sales of king and Spanish mackerel harvested by commercial vessels without Federal commercial king and Spanish mackerel permits was considered, but rejected, because the South Atlantic Council chose to prohibit all sales of king and Spanish mackerel harvested by vessels without the above Federal commercial permits. The status quo alternative, however, would have a smaller adverse economic impact on small businesses in the finfish fishing industry than the preferred alternative.

The alternative to prohibit sales of king and Spanish mackerel by anglers aboard for-hire fishing vessels with Federal commercial king and Spanish mackerel permits in the Gulf Council's jurisdiction was considered, but rejected because it would have a larger adverse economic impact on small businesses in the for-hire fishing industry than the preferred alternative.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. NMFS is revising the collection-of-information requirements under OMB control number 0648–0205. NMFS estimates the removal of the income qualification requirements for commercial king and Spanish mackerel permit holders will result in a net decrease in the time to complete the Federal Permit Application (for all applicants). In addition, the current burden estimate of 40 minutes per applicant to complete the application form would decrease to 30 minutes per applicant, because the application instructions have been simplified and reorganized so that there are half as many pages of instructions to read when filling out the application. These

estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

These requirements have been submitted to OMB for approval. NMFS seeks public comment regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 622**

Atlantic, Coastal Migratory Pelagic Resources, Fisheries, Fishing, Gulf, King mackerel, Spanish mackerel.

Dated: March 13, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.370, paragraphs (a)(1) and (a)(3) are revised to read as follows:

**§ 622.370 Permits**

(a) * * *

(1) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. See § 622.371 regarding a limited access system applicable to commercial vessel permits for king mackerel and transfers of permits under the limited access system.

* * * * *

(3) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board.

* * * * *

**§ 622.371 [Amended]**

■ 3. In § 622.371, remove paragraphs (c), (d), and (e), and redesignate paragraph (f) as paragraph (c).

■ 4. In § 622.386, paragraph (a) is revised and paragraphs (d) and (e) are added to read as follows:

**§ 622.386 Restrictions on sale/purchase.**

* * * * *

(a) *King and Spanish mackerel.* A king or Spanish mackerel harvested or possessed in the EEZ on board a vessel that does not have a valid commercial vessel permit for king mackerel, as required under § 622.370(a)(1), or a valid commercial vessel permit for Spanish mackerel, as required under § 622.370(a)(3), or a king or Spanish mackerel harvested in the EEZ or possessed under the bag limits specified in § 622.382, may not be sold or purchased, except when harvested under the bag limits on board a vessel operating in the Gulf as a charter vessel or headboat and that vessel has both a valid Federal charter vessel/headboat permit for Gulf coastal migratory pelagic fish, as required under § 622.370(b)(1), and a valid commercial vessel permit for king mackerel or Spanish mackerel, as required under § 622.370(a)(1), as appropriate to the species harvested or possessed.

* * * * *

(d) *Cut-off (damaged) king or Spanish mackerel.* A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.380(b) or (c), respectively, or that is in excess of the trip limits specified in § 622.385(a) or (b), respectively.

(e) *State-permitted tournaments.* King or Spanish mackerel harvested in a state-permitted tournament in the South Atlantic, Mid-Atlantic, or the Gulf may not be sold for profit but may be donated to a state dealer or Federal dealer. Dealers accepting these tournament-caught king or Spanish mackerel must be permitted and must comply with all transfer and reporting requirements. Specifically, dealers must donate the monetary value (sale price or cash equivalent of value received for the landings) from the sale of tournament-caught fish to a charitable organization, as determined by the state. The monetary value received from the sale of tournament-caught fish may not be used to pay for tournament expenses. In addition, the fish must be handled and iced according to the Hazard Analysis Critical Control Point (HACCP) standards, and dealers must report tournament caught king and Spanish mackerel as ''tournament catch'' and comply with all Federal and state reporting requirements.

[FR Doc. 2014–06067 Filed 3–18–14; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 130606533–4224–01]**

**RIN 0648–BD36**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26 and Amendment 29 Supplement

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to supplement the regulations implementing Amendments 26 and 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). Amendment 26 established an individual fishing quota (IFQ) program for the red snapper commercial sector of the reef fish fishery in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ). Amendment 29 established a multi-species IFQ program for the grouper and tilefish component of the commercial sector of the reef fish fishery in the Gulf EEZ. If implemented, this rule would specify procedures for closing an IFQ account and modify requirements for IFQ landing transactions, landing notifications, and offloading. The purpose of this proposed rule is to enhance the monitoring, enforcement, and review of the IFQ programs as specified in Amendments 26 and 29 to the FMP.

**DATES:** Written comments must be received on or before April 18, 2014.

**ADDRESSES:** You may submit comments on this document, identified by

''NOAA–NMFS–2013–0122'', by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0122,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Catherine Hayslip, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendments 26 and 29, which each include a final environmental impact statement (FEIS), a regulatory impact review (RIR), and a regulatory flexibility act analysis may be obtained from the Council's Web site at *http://www.gulfcouncil.org/fishery_management_plans/reef_fish_management_archives.php.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and the Office of Management and Budget (OMB), by email at *OIRA Submission@omb.eop.gov,* or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hayslip, telephone 727–824–5305, email *Catherine.Hayslip@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

**Background**

In 2006, NMFS published a final rule implementing Amendment 26 to the FMP, which established the Gulf of Mexico Red Snapper Individual Fishing Quota (IFQ) program (71 FR 67447, November 22, 2006). In 2009, NMFS published a final rule implementing Amendment 29 to the Reef Fish FMP, which established the Gulf of Mexico Grouper-Tilefish IFQ program (74 FR 44732, August 31, 2009). Two additional rules were published in 2010 and 2011 modifying the procedures for administering these IFQ programs (75 FR 9116, March 1, 2010, and 76 FR 68339, November 4, 2011). If implemented, this proposed rule would specify procedures for closing an IFQ account and modify requirements for IFQ landing transactions, landing notifications, and offloading. The purpose of this proposed rule is to enhance the monitoring, enforcement, and review of the IFQ programs as specified in Amendments 26 and 29 to the Reef Fish FMP.

**Management Measures Contained in This Proposed Rule**

*Close an IFQ Account*

There are over 1,150 shareholder accounts and more than 150 dealer accounts in the IFQ online system. As of June 2013, 288 shareholder accounts hold no shares or allocation and many dealer accounts are not actively used. This rulemaking would establish procedures for NMFS IFQ Customer Service staff or IFQ account holders to close a shareholder account that no longer holds shares and allocation, or a dealer account that has paid all cost recovery fees. Under these provisions, IFQ account holders could close an account at any time by submitting a Close Account Request Form to NMFS. This form has already been approved (OMB Control No. 0648–0551) for use by NMFS to close IFQ accounts. This rulemaking would also allow NMFS IFQ Customer Service staff to close an IFQ account if no landing transactions or IFQ transfers have been completed by the IFQ account holder in at least 1 year. Accounts closed by NMFS IFQ Customer Service staff may be reopened at the request of the IFQ account holder. Closing accounts will reduce the number of records NMFS needs to maintain.

*Landing Notifications*

Current regulations specify that a vessel account must hold sufficient IFQ allocation from the time of advance notice of landing through completion of the landing transaction. This rulemaking would allow allocation to be held in either a vessel account or the vessel account's linked shareholder account at the time of advance notice of landing. On occasion, a vessel does not have sufficient allocation in its vessel account at the time of advance notice of landing, but does have sufficient allocation in its linked shareholder account. This rulemaking would provide vessel captains and shareholders additional flexibility when completing a landing notification that is similar to an overdraft protection account. The IFQ online system would automatically determine if a vessel and/or a vessel's linked shareholder account has sufficient allocation at the time of advance notice of landing. However, before completing a landing transaction the shareholder would need to transfer allocation from the shareholder account to the vessel account if sufficient allocation does not exist in the vessel account to allow the dealer to complete the landing transaction.

This rulemaking would also extend the advance notice of landing reporting window for IFQ species. Currently, the owner or operator of a vessel landing IFQ species is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing. The window of time for reporting an advance notice of landing would be extended from 12 to 24 hours. This would provide vessel owners and operators additional flexibility when making landing notifications, while still providing law enforcement sufficient advance notice to meet vessels at the landing location for inspection. The additional time would allow fishermen making day trips greater than 12 hours to make landing notifications in advance of their trip. The additional time would also allow owners or operators to make multiple landing notifications at the same time, especially if the vessel will be landing at multiple landing locations to offload fish.

Current regulations do not specify procedures for making changes to landing notifications. This rulemaking would specify that any changes to a landing notification (time of landing, landing location, dealer, or change in estimated pounds) would require a new landing notification, which would supersede the previous notification. If changes are made to the landing location, the time of landing is earlier than previously specified, or more than one superseding notification is submitted on a trip, the vessel must provide at least a 3-hour notification prior to landing. If changes are made to the dealer(s) purchasing the fish or the

estimated weights of fish to be landed, a vessel would need to make a new notification, but would not have to wait an additional 3 hours before landing, as long as the landing time is later than or equal to the previous notification.

This rulemaking would also require that a vessel land within 30 minutes after the time given in the landing notification, unless a state or Federal law enforcement officer has authorized a landing prior to the notification time. If a vessel is landing more than 30 minutes after the time given in the landing notification, the owner or operator of the vessel must submit a new landing notification, but will not be required to wait an additional 3 hours to land as long as only one superseding landing notification has been submitted for the trip. As stated in the paragraph above, if more than one superseding notification has been made for a trip, the vessel would be required to wait an additional 3 hours before landing. Allowing owners and operators to change landing notifications once without waiting an additional 3 hours should increase flexibility and reduce the amount of time a vessel may wait to land. Requiring vessels to land within 30 minutes after the time indicated in the landing notification is intended to aid law enforcement by ensuring vessels land at or near the reported time. During the August 2013 Gulf of Mexico Fishery Management Council meeting, the Council discussed extending the landing window from 30 minutes to 1 hour based on public comments received. During the November 2013 Red Snapper IFQ ad hoc Advisory Panel meeting, the Advisory Panel discussed and recommended that the landing window be extended from 30 minutes to 1 hour. NMFS is specifically interested in input from fishermen regarding whether a 30-minute landing window is sufficient. If it is not a sufficient window of time to land, NMFS is interested in knowing if 1 hour would be sufficient for landing.

Additionally, this rule would allow vessels to land prior to a 3-hour notification if a state or Federal law enforcement officer is present at the landing site and authorizes the owner or operator of the vessel to land early. Currently, vessels submitting a landing notification may return to port earlier than anticipated, but may not land until waiting a minimum of 3 hours. This results in some vessels idling or anchoring in sight of the landing location until 3 hours have passed. This rule would provide vessel owners and operators additional flexibility by allowing them to land prior to the time on the advance notice of landing.

This rule would remove regulatory language related to landing notifications. A phrase stating ''NMFS will add other methods of complying with the advance notice of landing requirement'' would be removed because NMFS has already identified numerous methods for submitting landing notifications. Regulatory language would also be removed that precludes authorization to complete a landing transaction if an advance notice of landing is not submitted. There are numerous circumstances when an advance notice of landing may be properly submitted by the vessel owner or captain, but the advance notice of landing is not received due to technological problems (*e.g.,* VMS transmission failure, online system failure).

*Landing Transactions*

This rule would prohibit the deduction of ice and water weight when reporting an IFQ landing transaction, specify that a dealer must report all IFQ landings via the IFQ Web site, specify timeframes for completing a landing transaction, and clarify that a dealer may only receive IFQ fish transported by a vehicle or a trailered vessel that has a corresponding transaction approval code.

Currently, regulations do not specify how fish should be weighed before completing a landing transaction. Dealers throughout the Gulf of Mexico use a variety of methods for weighing fish, with some deducting for ice and water weight and others not making any deductions. Input received from dealers and fishermen indicates deductions may range from 0 to 3 percent of the total amount landed, meaning some dealers pay less cost recovery than other dealers that are not making these same deductions. This rule would require dealers to include ice and water weight when purchasing IFQ species. NMFS considered specifying a standardized deduction percentage for ice and water weight. However, NMFS determined that this would be impracticable to estimate and would need to be species-specific due to varying industry practices for icing fish, differences in trip durations that may affect how much water and ice retention occurs, varying dealer practices for removing ice from fish prior to weighing, and varying fish sizes and body shapes.

This rulemaking would also clarify that fish must be sold to a federally permitted dealer and dealers must report all landings and their actual ex-vessel prices via the IFQ online Web site. These proposed regulations would ensure all landings and sales of IFQ species are accounted for and fish are not kept by a captain and/or crew without first being reported. Federal regulations at 50 CFR 622.38 prohibit a person aboard a vessel that has a Federal commercial vessel permit for Gulf reef fish and commercial quantities of Gulf reef fish from possessing Gulf reef fish caught under a bag limit.

The timeframe for submitting a landing transaction would also be clarified. Current regulations state the dealer is responsible for completing a landing transaction report for each landing and sale of IFQ species at the time of the transaction. In some instances, landing transactions are entered days to weeks after landing and offload. This rulemaking would require a dealer to complete a landing transaction for IFQ species on the day of offload. The purpose of this proposed regulation is to improve the timeliness and accuracy of landing transactions.

To improve accountability of the IFQ species that are transported to a dealer by a vehicle or a trailered vessel, this rule clarifies that a dealer may only receive IFQ fish that have a corresponding transaction approval code.

*Offloading*

This rulemaking proposes several changes to the offloading requirements. Offloading is currently prohibited from 6 p.m. to 6 a.m. local time. This rule would authorize offloads beginning before 6 p.m. to continue after 6 p.m. if a state or Federal law enforcement officer is present and authorizes the offload to continue. This change would provide dealers and vessel owners/operators additional flexibility when offloading fish. This rule would also require vessels to offload IFQ species within 72 hours of landing. The purpose of this regulation is to ensure IFQ species are offloaded and landing transactions are completed in a timely manner after a fishing trip ends. During the August 2013 Council meeting, the Council discussed providing exceptions to the offloading window to account for Sundays and holiday weekends, and considered extending the offloading window from the proposed 72 hours to 96 hours. During the November 2013 Red Snapper IFQ ad hoc Advisory Panel meeting, the Advisory Panel discussed and recommended that the offloading window exclude Sundays and holidays and that offloading continue after 6 p.m. if authorized by a state or Federal law enforcement offices. NMFS is specifically interested in receiving input regarding the sufficiency of the 72-hour allotted timeframe for completing an offload or whether 96 hours would be a

better timeframe for completing an offload after landing.

*Landing Locations*

Regulations currently state landing locations must be approved by the Office for Law Enforcement prior to a vessel landing IFQ species at these sites. Regulations also require the owner or operator of a vessel to report the location of landing at the time of the advance notice of landing. This rule would clarify and explicitly state that IFQ species must be landed at an approved landing location. This change follows the Council's original intent that the IFQ program require vessels to land at pre-approved landing locations.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with Amendments 26 and 29, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

The SBA has established size criteria for all major industry sectors in the U.S. including commercial fish harvesters and seafood dealers. The SBA periodically reviews and changes, as appropriate, these size criteria. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). This rule increased the size standard for commercial fish harvesters from $4.0 million to $19.0 million. Neither this rule, nor other recent SBA review, changed the size standard for seafood dealers.

A business involved in commercial fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $19.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. A business involved in seafood purchasing and processing (seafood business) is classified as a small business based on either employment standards or revenue thresholds. A seafood processer that employs 500 or fewer is considered a small entity (NAICS code 311712, fresh and frozen seafood processing), as is a fish or seafood wholesaler with 100 or fewer employees (NAICS code 424460, fish and seafood merchant wholesalers). A seafood business is classified as a small entity if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 445220, fish and seafood marketing) for all affiliated operations worldwide.

This rulemaking, if adopted, would be expected to directly affect all entities that hold a Gulf of Mexico (Gulf) individual fishing quota (IFQ) shareholder account and all seafood dealers that purchase IFQ species. There are over 1,150 shareholder accounts, and more than 150 dealer accounts in the IFQ online system. Although all IFQ shareholders are not required to possess a valid or renewable commercial reef fish permit, this permit is required to harvest and sell IFQ species. As a result, it is assumed for the purpose of this assessment that the majority of the entities that hold an IFQ shareholder account are entities that also possess a valid or renewable commercial reef fish permit. The average annual total revenue for vessels with a commercial reef fish permit is estimated to be less than $100,000 (2011 dollars). As a result, all entities with a shareholder account that would be expected to be directly affected by this rule are believed to be small business entities.

Neither employment information nor total average annual revenue estimates for dealers that purchase IFQ species are available. The total value paid to fishermen for IFQ species was approximately $14.2 million (2012 dollars) for red snapper in 2012, and approximately $21.5 million (2012 dollars) for groupers and tilefishes in 2011, or approximately $35.7 million for all IFQ species. Because IFQ species may only be sold to dealers with IFQ accounts, these payments equate to $238,000 per dealer account. These dealers would also be expected to purchase and sell other marine species in addition to IFQ species. Although the revenue paid to fishermen is not equivalent to the revenue received by the dealer, and dealers would be expected to sell other marine species, because of the large difference between the SBA average annual revenue threshold ($7.0 million) and the average annual payment for the purchase per dealer of IFQ species ($238,000; the SBA threshold is 29 times the average annual payment for the purchase of IFQ species), all dealers that NMFS expects would be directly affected by this rule are believed to be small business entities.

This rule, if implemented, would establish several changes to the administrative functions and compliance requirements of the Gulf IFQ programs. Some of the proposed changes would increase the operational flexibility of commercial fishing vessels and seafood dealers that participate in the Gulf IFQ programs, some of the proposed changes would reduce this flexibility, and some of the proposed changes would only make administrative changes and clarifications that NMFS does not expect to have any economic effect on any vessels or dealers involved in the Gulf IFQ programs. The economic effects of these proposed changes cannot be quantified with available data. However, the proposed changes are intended to support better monitoring and administration of the Gulf IFQ programs and none of these changes would be expected to have a direct substantial effect on the total allowable harvest of IFQ species, average prices, total revenue, or distribution of revenue and profits amongst program participants. Further, although the proposed changes would apply to all program participants and IFQ transactions, only a small portion of IFQ transactions by a small number of participants would likely be impacted.

As noted above, the primary purpose of this rule is to modify the administrative functions and compliance requirements of the Gulf IFQ programs. These changes will have little, if any, economic impact on the affected entities, but will improve their ability to bring fish to market. As a result, this rule, if implemented, would not have a significant economic impact on a substantial number of small entities.

Because this proposed rule, if implemented, is not expected to have a direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction

Action (PRA) applicable to participants in the Gulf IFQ programs, namely, a requirement for an IFQ shareholder or dealer to close an IFQ account if the IFQ account holder no longer fishes commercially, no longer owns any IFQ shares or allocation, or no longer wishes to participate as a dealer.

This requirement has been approved by the OMB under control number 0648–0551. The public reporting burden for this collection-of-information is estimated to average 2 minutes per response to complete and submit a Close IFQ Account Request Form. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Enforcement, Grouper, Gulf, IFQ, Red Snapper, Tilefish.

Dated: March 13, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. Amend § 622.21 by:

■ a. Revising paragraph (a)(5);

■ b. Removing paragraph (a)(6);

■ c. Revising the 9th sentence in paragraph (b)(1) and adding a sentence between the 9th and 10th sentences;

■ d. Revising paragraphs (b)(3)(i), (b)(3)(iii), (b)(5)(i), (ii), and (iv), and;

■ e. Revising the first sentence in paragraph (b)(5)(v) and adding a sentence before the first sentence;

The additions and revisions to read as follows.

**§ 622.21 Individual fishing quota (IFQ) program for Gulf red snapper.**

(a) * * *

(5) *Closing an IFQ account.* IFQ account holders may close an IFQ account by completing and submitting a Close IFQ Account Request Form to NMFS. This form must be signed by an account holder named on the IFQ account. If the request to close an IFQ account is being made because the sole account holder is deceased, the person requesting the closure must sign the Close IFQ Account Request Form, indicating the relationship to the deceased, provide a death certificate, and provide any additional information NMFS determines is necessary to complete the request. IFQ shareholder accounts may not be closed until all shares and allocation have been transferred from the account to another IFQ account holder. Dealer accounts may not be closed until all cost recovery fees have been received by NMFS. NMFS' IFQ Customer Service staff may close an IFQ account if all shares and allocation have been transferred from the account, all cost recovery fees have been received by NMFS, and no landing transactions or IFQ transfers have been completed by the IFQ account holder in at least 1 year. If an account is closed by NMFS' IFQ Customer Service staff, it may be reopened at the request of the IFQ account holder by contacting IFQ Customer Service.

(b) * * *

(1) * * * A vessel account, or its linked IFQ shareholder account, must hold sufficient IFQ allocation, at least equal to the pounds in gutted weight of the red snapper on board at the time of advance notice of landing. Allocation must be transferred to the vessel account, so that the vessel account holds sufficient IFQ allocation at the time of the landing transaction (except for any overage allowed as specified in paragraph (b)(3)(ii) of this section). * * *

* * * * *

(3) * * *

(i) At the time of advance notice of landing, the IFQ vessel account, or its linked IFQ shareholder account, must contain allocation at least equal to the pounds in gutted weight of red snapper to be landed, except as provided in paragraph (b)(3)(ii) of this section. At the time of the landing transaction, the IFQ vessel account must contain allocation at least equal to the pounds in gutted weight of red snapper to be landed, except as provided in paragraph (b)(3)(ii) of this section. Such red snapper must be sold and can be received only by a dealer who has a valid Gulf IFQ dealer endorsement and an active IFQ dealer account (*i.e.,* not in delinquent status). All IFQ landings and their actual ex-vessel prices must be reported via the IFQ Web site at *ifq.sero.fisheries.noaa.gov.*

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(iii) The dealer must complete a landing transaction report for each landing of Gulf red snapper via the IFQ Web site at *ifq.sero.fisheries.noaa.gov* on the day of offload. IFQ red snapper must be offloaded within 72 hours from the time of landing, in accordance with the reporting form(s) and instructions provided on the Web site. This report includes date, time, and location of transaction; weight and actual ex-vessel price of red snapper landed and sold (when calculating the weight of IFQ red snapper during a landing transaction, ice and water weight must be included); and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering his unique PIN when the transaction report is submitted. After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the allocation holder.

* * * * *

(5) * * *

(i) *Advance notice of landing*—(A) *General requirement.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 24 hours, in advance of landing to report the time and location of landing, estimated red snapper landings in pounds gutted weight, vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer(s) where the red snapper are to be received. The vessel must land within 30 minutes after the time given in the landing notification except as provided in paragraph (b)(5)(i)(C) of this section. The vessel landing red snapper must have sufficient IFQ allocation in the IFQ vessel account, or its linked IFQ shareholder account, at least equal to the pounds in gutted weight of all red snapper on board (except for any overage up to the 10 percent allowed on the last fishing trip) at the time of the advance notice of landing.

(B) *Submitting an advanced landing notification.* Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer

Service at 1–866–425–7627, completing and submitting to NMFS a landing notification provided through the VMS unit, or providing the required information to NMFS through the Web-based form available on the IFQ Web site at *ifq.sero.fisheries.noaa.gov.*

(C) *Landing prior to the notification time.* The owner or operator of a vessel that has completed a landing notification and submitted it to NMFS may land prior to the notification time, only if a state or Federal law enforcement officer is present at the landing site and has authorized the owner or operator of the vessel to land early.

(D) *Changes to a landing notification.* The owner or operator of a vessel who has submitted a landing notification to NMFS may make changes to the notification by submitting a superseding notification. If the initial superseding notification makes changes to one or more of the following: The time of landing (if landing more than 30 minutes after the time on the notification), the dealer(s), or the estimated weights of fish to be landed, the vessel does not need to wait an additional 3 hours to land. If the initial superseding notification makes changes to the landing location, the time of landing is earlier than previously specified, or more than one superseding notification is submitted on a trip, the vessel must wait an additional 3 hours to land, except as provided in paragraph (b)(5)(i)(C) of this section.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ red snapper from a vessel. IFQ red snapper may be offloaded only between 6 a.m. and 6 p.m., local time, unless a state or Federal law enforcement officer is present at the offloading at 6 p.m. and authorizes the owner or operator of the vessel to continue offloading after 6 p.m., local time.

* * * * *

(iv) *Requirement for transaction approval code.* If IFQ red snapper are offloaded to a vehicle for transport or are on a vessel that is trailered for transport, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ red snapper in possession and a copy of the dealer endorsement must accompany any IFQ red snapper from the landing location through possession by a dealer. This requirement also applies to IFQ red snapper possessed on a vessel that is trailered for transport. A dealer may only receive IFQ red snapper transported by a vehicle or a trailered vessel that has a corresponding transaction approval code.

(v) *Approved landing locations.* IFQ red snapper must be landed at an approved landing location. Landing locations must be approved by NMFS Office for Law Enforcement prior to a vessel landing IFQ red snapper at these sites. * * *

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■ 3. Amend § 622.22 by:

■ a. Adding paragraph (a)(8);

■ b. Revising the 9th sentence in paragraph (b)(1) and adding a sentence between the 9th and 10th sentences;

■ c. Revising paragraphs (b)(3)(i), (b)(3)(iii), (b)(5)(i), (ii), and (iv);

■ d. Revising the first sentence in paragraph (b)(5)(v) and adding a sentence before the first sentence in paragraph.

The additions and revisions to read as follows:

**§ 622.22 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.**

(a) * * *

(8) *Closing an IFQ account.* IFQ account holders may close an IFQ account by completing and submitting a Close IFQ Account Request Form to NMFS. This form must be signed by an account holder named on the IFQ account. If the request to close an IFQ account is being made because the sole account holder is deceased, the person requesting the closure must sign the Close IFQ Account Request Form, indicating the relationship to the deceased, provide a death certificate, and provide any additional information NMFS determines is necessary to complete the request. IFQ shareholder accounts may not be closed until all shares and allocation have been transferred from the account to another IFQ account holder. Dealer accounts may not be closed until all cost recovery fees have been received by NMFS. NMFS' IFQ Customer Service staff may close an IFQ account if all shares and allocation have been transferred from the account, all cost recovery fees have been received by NMFS, and no landing transactions or IFQ transfers have been completed by the IFQ account holder in at least 1 year. If an account is closed by NMFS' IFQ Customer Service staff, it may be reopened at the request of the IFQ account holder by contacting IFQ Customer Service.

(b) * * *

(1) * * * A vessel account, or its linked IFQ shareholder account, must hold sufficient IFQ allocation in the appropriate share category, at least equal to the pounds in gutted weight of the groupers and tilefishes on board at the time of advance notice of landing. Allocation must be transferred to the vessel account, so that the vessel account holds sufficient IFQ allocation at the time of the landing transaction (except for any overage allowed as specified in paragraph (b)(3)(ii) for groupers and tilefishes). * * *

* * * * *

(3) * * *

(i) At the time of advance notice of landing, the IFQ vessel account, or its linked IFQ shareholder account, must contain allocation at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, except as provided in paragraph (b)(3)(ii) of this section. At the time of the landing transaction, the IFQ vessel account must contain allocation at least equal to the pounds in gutted weight of grouper or tilefish species to be landed, except as provided in paragraph (b)(3)(ii) of this section. Such groupers and tilefishes must be sold and can be received only by a dealer who has a valid Gulf IFQ dealer endorsement and an active IFQ dealer account (*i.e.,* not in delinquent status). All IFQ landings and their actual ex-vessel prices must be reported via the IFQ Web site at *ifq.sero.fisheries.noaa.gov.*

* * * * *

(iii) The dealer must complete a landing transaction report for each landing of Gulf groupers or tilefishes via the IFQ Web site at *ifq.sero.fisheries.noaa.gov* on the day of offload. IFQ groupers and tilefishes must be offloaded within 72 hours from the time of landing, in accordance with the reporting form(s) and instructions provided on the Web site. This report includes date, time, and location of transaction; weight and actual ex-vessel price of groupers and tilefishes landed and sold (when calculating the weight of IFQ groupers and tilefishes during a landing transaction, ice and water weight must be included); and information necessary to identify the fisherman, vessel, and dealer involved in the transaction. The fisherman must validate the dealer transaction report by entering the unique PIN for the vessel account when the transaction report is submitted. After the dealer submits the report and the information has been verified by NMFS, the online system will send a transaction approval code to the dealer and the allocation holder.

* * * * *

(5) * * *

(i) *Advance notice of landing*—(A) *General requirement.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 24 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer(s) where the groupers or tilefishes are to be received. The vessel must land within 30 minutes after the time given in the landing notification except as provided in paragraph (b)(5)(i)(C) of this section. The vessel landing groupers or tilefishes must have sufficient IFQ allocation in the IFQ vessel account, or its linked IFQ shareholder account, and in the appropriate share category or categories, at least equal to the pounds in gutted weight of all groupers and tilefishes on board (except for any overage up to the 10 percent allowed on the last fishing trip) at the time of the advance notice of landing.

(B) *Submitting an advanced landing notification.* Authorized methods for contacting NMFS and submitting the report include calling IFQ Customer Service at 1–866–425–7627, completing and submitting to NMFS a landing notification provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ Web site at *ifq.sero.fisheries.noaa.gov.*

(C) *Landing prior to the notification time.* The owner or operator of a vessel that has completed a landing notification and submitted it to NMFS may land prior to the notification time, only if a state or Federal law enforcement officer is present at the landing site and has authorized the owner or operator of the vessel to land early.

(D) *Changes to a landing notification.* The owner or operator of a vessel who has submitted a landing notification to NMFS may make changes to the notification by submitting a superseding notification. If the initial superseding notification makes changes to one or more of the following: The time of landing (if landing more than 30 minutes after the time on the notification), the dealer(s), or the estimated weights of fish to be landed, the vessel does not need to wait an additional 3 hours to land. If the initial superseding notification makes changes to the landing location, the time of landing is earlier than previously specified, or more than one superseding notification is submitted on a trip, the vessel must wait an additional 3 hours to land, except as provided in paragraph (b)(5)(i)(C) of this section.

(ii) *Time restriction on offloading.* For the purpose of this paragraph, offloading means to remove IFQ groupers and tilefishes from a vessel. IFQ groupers or tilefishes may be offloaded only between 6 a.m. and 6 p.m., local time, unless a state or Federal law enforcement officer is present at the offloading at 6 p.m. and authorizes the owner or operator of the vessel to continue offloading after 6 p.m.

* * * * *

(iv) *Requirement for transaction approval code.* If IFQ groupers or tilefishes are offloaded to a vehicle for transport or are on a vessel that is trailered for transport, on-site capability to accurately weigh the fish and to connect electronically to the online IFQ system to complete the transaction and obtain the transaction approval code is required. After a landing transaction has been completed, a transaction approval code verifying a legal transaction of the amount of IFQ groupers and tilefishes in possession and a copy of the dealer endorsement must accompany any IFQ groupers or tilefishes from the landing location through possession by a dealer. This requirement also applies to IFQ groupers and tilefishes possessed on a vessel that is trailered for transport. A dealer may only receive IFQ groupers and tilefishes transported by a vehicle or a trailered vessel that has a corresponding transaction approval code.

(v) *Approved landing locations.* IFQ groupers and tilefishes must be landed at an approved landing location. Landing locations must be approved by NMFS Office for Law Enforcement prior to a vessel landing IFQ groupers or tilefishes at these sites. * * *

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## PART 622—[AMENDED]

■ 4. In part 622, revise ''IFQ online account'' to read ''IFQ account'' wherever it occurs.

## PART 622—[AMENDED]

■ 5. In part 622, revise ''*ifq.sero.nmfs.noaa.gov*'' to read ''*ifq.sero.fisheries.noaa.gov*'' wherever it occurs.

[FR Doc. 2014–06065 Filed 3–18–14; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 130805680–4200–01]**

**RIN 0648–BD58**

# Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Action

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) (Framework Action), as prepared and submitted by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). If implemented, this rule would allow transfer of Atlantic migratory group Spanish mackerel caught in excess of the trip limit with gillnet gear from one vessel with a Federal Spanish mackerel commercial permit to another vessel with a Federal Spanish mackerel commercial permit that has not yet harvested the trip limit; allow the receiving vessel involved in a Spanish mackerel transfer-at-sea to have three gillnets onboard instead of two; and modify the commercial trip limits for king mackerel in the Florida east coast subzone. This rule also proposes an administrative change to correct an inadvertent error in a prior rulemaking unrelated to this Framework Action. The purpose of this rule is to modify the restrictions on transfer-at-sea and gillnet allowances for Atlantic migratory group Spanish mackerel to minimize dead discards of Spanish mackerel and modify the king mackerel trip limit in the Florida east coast subzone to optimize utilization of the resource.

**DATES:** Written comments must be received on or before April 18, 2014.

**ADDRESSES:** You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2013–0162'' by any of the following methods:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/*

*#!docketDetail;D=NOAA-NMFS-2013-0162,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• Mail: Submit written comments to Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Framework Action, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA) and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kate Michie, telephone: 727–824–5305, or email: *kate.michie@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The coastal migratory pelagic (CMP) fishery of the South Atlantic and the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

## Management Measures Contained in This Proposed Rule

This rulemaking would allow transfer-at-sea of Spanish mackerel in gillnets between vessels with Federal Spanish mackerel commercial permits that are using gillnet gear and allow vessels engaged in this transfer activity to have three gillnets onboard. This rulemaking would also modify the Atlantic king mackerel Florida east coast subzone trip limit so that during March 1 through March 31, if 70 percent or more of the quota has been harvested, the trip limit would remain at 50 fish per vessel per trip; however, if less than 70 percent of the quota has been harvested during that time, the trip limit would increase to 75 fish per vessel per trip until March 31. The purpose of this rulemaking is to modify the restrictions on transfer-at-sea and gillnet allowances for Atlantic migratory group Spanish mackerel to minimize dead discards of Spanish mackerel and modify the king mackerel trip limit in the Florida east coast subzone to optimize utilization of the resource.

### *Transfer-at-Sea and Gillnet Gear Restriction Modifications*

Currently in the South Atlantic, transfer-at-sea of harvested fish is prohibited for any species under a commercial trip limit, and only two gillnets are allowed on a federally permitted Spanish mackerel vessel at one time. In some instances, the Spanish mackerel trip limit may be exceeded with just one gillnet set, and the excess fish must be discarded. Many Spanish mackerel caught in gillnet gear die due to trauma experienced during capture. This proposed rule would allow a portion of a gillnet and the Spanish mackerel within the gillnet to be transferred from a federally permitted Spanish mackerel vessel that has reached the Spanish mackerel trip limit to another federally permitted Spanish mackerel vessel that has not yet reached the trip limit. Allowing transfer of Spanish mackerel in gillnets between vessels with Federal Spanish mackerel commercial permits that are using gillnet gear may reduce dead discards and minimize waste.

The transfer-at-sea of harvested fish would only be allowed if all the following conditions are met: (1) The owner or operator of both vessels involved in the transfer must report the transfer by telephone to the NOAA Office of Law Enforcement in Port Orange, Florida, prior to the transfer; (2) harvesting gear must be allowable gillnet gear, as specified in § 622.377(b); (3) transfer can only take place in Federal waters between two vessels with valid commercial permits for Spanish mackerel; (4) the receiving vessel must possess no more than three gillnets after the transfer is completed; (5) all Spanish mackerel exceeding the applicable daily vessel limit shall remain in the gillnet until transferred; (6) the quantity of Spanish mackerel transferred to any single vessel shall not exceed the applicable daily trip limit; and (7) transfers of Spanish mackerel may only occur once per vessel per trip.

Currently, only two gillnets with different mesh sizes are allowed to be possessed and used on federally permitted Spanish mackerel vessels. This proposed rule would also modify the two gillnet possession restriction in order to account for the portion of a third net that would be present onboard a vessel that receives Spanish mackerel transferred at sea. Only vessels engaged in this transfer activity would be allowed to have three gillnets onboard.

### *Atlantic King Mackerel Trip Limit Modification in the Florida East Coast Subzone*

This proposed rule would modify the commercial trip limits for Atlantic king mackerel in the Florida east coast subzone, which, from November 1 through March 31, is located in the area south of 29°25′ N. lat. (a line directly east from the Flagler/Volusia County, Florida, boundary) and north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, Florida, boundary). The current system of trip limits allows for an increase in the rate of landings, which at times can cause the commercial sector to close before the religious Lenten season ends, when demand for fish is typically substantially greater.

This rule proposes to extend the period of time the current 50-fish trip limit is in place each year from November through January to November through February. The rule also proposes to lower the threshold harvest level from 75 percent of the quota to 70 percent of the quota to determine whether or not the trip limit would increase during the month of March. Therefore, if implemented, during March 1 through March 31, if 70 percent or more of the quota has been harvested, the trip limit would remain at 50 fish per vessel per trip; however, if less than 70 percent of the quota has been harvested, the trip limit would increase to 75 fish per vessel per trip until March 31. From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel

area. Therefore, during this period, the provisions proposed in this rule would not apply. The trip limit modifications proposed through this rule are expected to help minimize lost fishing opportunities and optimize revenues of the coastal migratory pelagics fishery.

*Additional Changes Contained in This Proposed Rule*

Drift gillnets for all coastal migratory pelagic species and run-around gillnets for king mackerel were prohibited in the South Atlantic exclusive economic zone (EEZ) through the final rule implementing Amendment 3 to the FMP (54 FR 29561, July 13, 1989). However, the regulations currently at § 622.387, which address prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ, were inadvertently not removed at the time when the final rule for Amendment 3 was implemented. This rule proposes to correct this mistake by removing the regulations at § 622.387. This revision is unrelated to the Framework Action.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Framework Action, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The purpose of this rulemaking is twofold: (1) To eliminate the current prohibition on the transfer of Spanish mackerel by gillnet and (2) to modify trip limits for king mackerel that may extend the length of the open fishing season. This rule proposes to eliminate the current prohibition on the transfer of Spanish mackerel by gillnet to reduce dead discards and minimize waste. This proposed rule would modify trip limits for king mackerel to extend the length of the open fishing season, especially into the Lenten season when market demand is greater. The Magnuson-Stevens Act provides the statutory basis for these two proposed actions.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The rule would apply directly to businesses in the finfish fishing industry (NAICS 114111) that harvest Atlantic migratory group Spanish mackerel by gillnet and king mackerel in the Florida east coast subzone. On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). That rule increased the size standard for commercial finfish harvesters from $4.0 million to $19.0 million in annual receipts. The average ex-vessel revenue from Spanish mackerel harvested from Federal waters is estimated to be $31,000, which is substantially less than the $19 million SBA size standard. Consequently, all of the businesses that hold at least one of the 1,736 commercial vessel permits for Spanish mackerel (as of November 5, 2013) are presumed to be small businesses. The average ex-vessel revenue from king mackerel harvested in Federal waters is estimated to be $35,000. Therefore, it is presumed that all of the businesses that hold at least one of the 1,658 valid and renewable/transferrable king mackerel permits (a commercial vessel permit for king mackerel plus a commercial king mackerel gillnet permits as of September 30, 2013) are small businesses.

This rule would end the prohibition on transfers of Spanish mackerel by gillnet in the EEZ. Presently, if a vessel catches a quantity of Spanish mackerel in gillnets in the EEZ that exceeds the trip limit, the excess catch cannot be transferred to another vessel. Instead the excess catch has to be discarded back into the water, although many to most of the Spanish mackerel are dead. If implemented, the proposed rule would allow that transfer under certain conditions and would require the operator(s) of the two vessels engaged in a transfer to report the transfer by telephone to the NOAA Office of Law Enforcement in Port Orange, Florida, prior to the transfer. Any transfer would be voluntary, and a small business would participate in a transfer if it has a net economic benefit, and would not, if it has a net economic cost. It is unknown how many small businesses may participate in a transfer; however, the ability to transfer could generate a net economic benefit to small businesses.

NMFS considered one alternative, the no action alternative, to the proposed action of eliminating the prohibition on the transfer of Spanish mackerel by gillnet. The status quo alternative was rejected because it would not provide the potential economic benefit to small businesses as described above.

This rule would also change the commercial trip limit for king mackerel in the Florida east coast subzone, which could act to increase the length of the open fishing season. The proposed modified trip limit could potentially decrease the rate of landings in January, February and March; increase the average length of the open fishing season; reduce total landings for the season, and increase ex-vessel revenues from higher landings during the Lenten season. The magnitudes of these potential economic benefits and costs are unknown.

NMFS considered one status quo alternative and two non-status quo alternatives to the proposed action to modify the trip limit for king mackerel in the Florida east coast subzone. The status quo commercial trip limit is 50 fish from November 1 through January 31 each year; and then, beginning on February 1 and continuing through March 31, if 75 percent or more of the Gulf group Florida east coast subzone quota has been taken by January 31, the trip limit remains 50 fish. However, if less than 75 percent of the quota has been taken by January 31, the trip limit increases to 75 fish. The first of the rejected non-status quo alternatives would fix the trip limit to 50 fish for the entire fishing season. The adverse impact of this alternative is that it would not provide the flexibility to allow small businesses to increase landings of king mackerel when demand is greater during the Lenten season. The second of the non-status quo alternatives would fix the trip limit to 75 fish. This second alternative would likely reduce landings of king mackerel and associated dockside revenues when demand is greater during the religious Lenten season because its fixed trip limit of 75 fish would likely result in earlier closures, potentially before or at the beginning of the period of heightened demand. The status quo alternative would maintain the current trip limits and could result in an open fishing season that closes before the season of greater demand ends.

Finally, this rule also removes language in the codified text regarding prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ. This change corrects an inadvertent error in the text, as discussed in the preamble. The regulation contained in § 622.387 was necessary before separate quotas, trip

limits, and gillnet permits were implemented for the harvest of king mackerel off Florida. Since implementation of those management measures, the impact and relevance of § 622.387 have been zero. Consequently, its removal would have no impact on small businesses.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Gillnet, Mackerel, Reporting and recordkeeping requirements, South Atlantic, Trip limits.

Dated: March 13, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.377, paragraph (b)(2)(iii) is revised and paragraph (b)(2)(vi) is added to read as follows:

### § 622.377 Gillnet restrictions.

* * * * *

(b) * * *

(2) * * *

(iii) No more than two gillnets, including any net in use, may be possessed at any one time, except for a vessel with a valid commercial vessel permit for Spanish mackerel engaged in a transfer as specified in paragraph (b)(2)(vi) of this section. If two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm), except for a vessel with a valid commercial vessel permit for Spanish mackerel engaged in a transfer as specified in paragraph (b)(2)(vi) of this section, in which case the vessel may possess two gillnets of the same mesh size provided that one of the nets is transferred to that vessel.

* * * * *

(vi) A portion of a gillnet may be transferred at sea only in the EEZ and only from a vessel with a valid commercial vessel permit for Spanish mackerel that has exceeded a trip limit specified in § 622.385 (b) to another vessel with a valid commercial vessel permit for Spanish mackerel that has not yet reached the trip limit (the receiving vessel). Only one such transfer is allowed per vessel per day. In addition, to complete a legal transfer at sea, all of the following must apply:

(A) All fish exceeding the applicable commercial trip limit may not be removed from the gillnet until the transfer is complete (*i.e.,* the gillnet is onboard the receiving vessel). The fish transferred to the receiving vessel may not exceed the applicable commercial trip limit.

(B) The receiving vessel may possess no more than three gillnets on board after the transfer is complete.

(C) Prior to cutting the gillnet and prior to any transfer of Spanish mackerel from one vessel to another, the owner or operator of both vessels must contact NMFS Office for Law Enforcement, Port Orange, Florida, phone: 1–386–492–6686.

■ 3. In § 622.385, the third sentence in the introductory text and paragraphs (a)(2)(i)(A) and (B) are revised to read as follows:

### § 622.385 Commercial trip limits.

* * * Except for Atlantic migratory group Spanish mackerel harvested by gillnet, as specified in § 622.377 (b)(2)(vi), a species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. * * *

* * * * *

(a) * * *

(2) * * *

(i) * * *

(A) From November 1 through the end of February—not to exceed 50 fish.

(B) Beginning on March 1 and continuing through March 31—

(*1*) If 70 percent or more of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken—not to exceed 50 fish.

(*2*) If less than 70 percent of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken—not to exceed 75 fish.

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### § 622.387 [Removed and Reserved]

■ 4. Remove and reserve § 622.387.

[FR Doc. 2014–06062 Filed 3–18–14; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 130405338–4201–01]**

**RIN 0648–BC84**

## Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Chafing Gear Modifications

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The proposed action modifies the existing chafing gear regulations for midwater trawl gear. This action includes regulations that affect all trawl sectors (Shorebased Individual Fishing Quota Program, Mothership Cooperative Program, Catcher/Processor Cooperative Program, and tribal fishery) managed under the Pacific Coast Groundfish Fishery Management Plan (PCGFMP).

**DATES:** Comments on this proposed rule must be received no later than 5 p.m., local time on April 18, 2014. During the comment period, NMFS is specifically seeking comments on the proposed method of attachment for chafing gear, including the benefits and effects relative to current minimum mesh size restrictions and prohibition on double walled codends.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2012–0218, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0218,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* 206–526–6736; Attn: Becky Renko.
- *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Becky Renko.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public

viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko, 206–526–6110; (fax) 206–526–6736; *Becky.Renko@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

In January 2011, NMFS implemented a trawl rationalization program, a type of catch share program, for the Pacific Coast groundfish fishery's trawl fleet. The trawl rationalization program was adopted through Amendment 20 to the PCGFMP and consists of an individual fishing quota (IFQ) program for the shorebased trawl fleet (shoreside IFQ program) and cooperative programs for the at-sea mothership (MS coop program) and catcher/processor (CP coop program) trawl fleets. Since implementing the trawl rationalization program, the Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) have been working to refine the program with additional regulatory requirements, referred to as trailing actions. One trailing action is the modification of the current the chafing gear requirements for all midwater trawl gear.

Midwater trawl gear is the only type of trawl gear that harvesting vessels in the shorebased IFQ program, MS coop program, and CP coop program are allowed to use to target Pacific whiting. Midwater trawl gear may also be used by vessels in the shorebased IFQ program to target non-whiting species. The proposed action does not contemplate the use of midwater trawl gear beyond what is currently allowed by regulation.

The proposed action is to consider modifications to the chafing gear regulations that apply to all midwater trawl gear. Chafing or chafer panels are webbing or other material attached to the codend to minimize damage to the codend netting from wear caused by the codend rubbing against the stern ramp and trawl alley during net retrieval and from contact with the ocean floor. The current chafing gear restrictions at 50 CFR § 660.130 for midwater trawl gear are: restrict chafing coverage to 50 percent or less of the codend circumference; restrict chafing coverage to the last 50 meshes of the codend; prohibit sections of chafing gear from being longer than 50 meshes; and require chafing gear to be attached outside riblines and restraining straps.

In 2011, some Pacific Coast trawl vessel owners that use midwater gear to target Pacific whiting expressed concern that the current regulations limit chafing gear to the last 50 meshes of the codend. The vessel owners believe that this aspect of the current regulations was an error that inadvertently occurred when the regulations were revised in 2007. Prior to 2007, the regulations allowed chafing gear to cover the full length of midwater trawl codends. The 2007 regulatory revision consolidated the regulations into one section and was not intended to result in substantive changes to the regulations.

Chafing gear measures were originally adopted in 1994 and were intended to provide vessels with greater flexibility in respect to types, size, and attachment of material used to protect the net without reducing the effectiveness of the mesh size regulation. The measures included restricting chafing coverage to 50 percent or less of the codend circumference, which was intended to leave the top half of the net bare to improve escapement of small fish. Restrictions on the length of chafing section (50 meshes in length) and requirements for attachment outside the riblines and restraining straps were intended to allow the entire length of the codend to be covered, while providing exit points for fish trapped between the codend mesh and the chafing gear.

This proposed rule also includes minor technical revisions to related regulatory text. Section 660.11, General definitions, contains basic descriptions of small footrope, large footrope and midwater trawl gear. In-depth descriptions of these trawl gears found in § 660.130 were modified to eliminate redundancy and increase clarity.

## Chafing Modifications for Midwater Trawl Gear

In 2011, while revisions to the chafing gear restrictions were being considered, some Pacific whiting vessel owners requested that broader changes be considered to address the current needs of the fishery. From 2003 to 2010, approximately 63 percent of the vessels that fished for Pacific whiting were also used in the Alaska groundfish fishery to target Pollock with pelagic trawl gear. The chafing requirements for midwater trawl gear used in Pacific Coast groundfish fisheries are more restrictive than the Alaska groundfish fishery requirements. Codends for midwater trawling range in cost from $10,000 to $200,000 each. To reduce operational costs for vessels operating in both regions, some vessel owners requested that the chafing gear requirements for midwater trawl gear in the Pacific Coast groundfish fishery be modified to allow for greater coverage so codends currently used in the Alaska fisheries could be used in both regions.

In November 2011, the Trawl Rationalization Regulatory Evaluation Committee (TREC) reported on trailing actions and included a recommendation that the Council consider revisions to the chafing gear regulations to conform to current fishery needs. The Council recommended moving forward with revisions for 2013. In March 2012, the TREC presented the Council with a preliminary analysis that included three alternative actions for chafing gear: No Action, Alternative 1 to eliminate all chafing gear restrictions as they apply to midwater trawl gear, and Alternative 2 to amend the midwater trawl gear restrictions to allow for greater chafing gear coverage on the codend consistent with the Alaska groundfish fishery regulations. The Council discussed the issue and indicated that it was important to move ahead with chafing gear revisions for the 2013 Pacific whiting season. The Council selected Alternative 2 as the Final Preferred Alternative to be analyzed in an Environmental Assessment (EA).

At the Council's September 2012 meeting, NMFS informed the Council that its Sustainable Fisheries Division (SFD) had reviewed the range of alternatives and found that Alternative 1, to eliminate all chafing gear restrictions, appeared to be inconsistent with the Council's ''Bycatch Mitigation Plan'' and measures specified in Amendment 18 to the PCGFMP. Although implementation of trawl rationalization has reduced concerns about groundfish bycatch, the bycatch of non-groundfish species including Endangered Species Act (ESA) listed species and forage fish was a concern. Section 6.6.1.2 of the PCGFMP describes the Council's bycatch mitigation relative to mesh size restrictions as follows: Regarding the ''success of minimum mesh size restrictions in allowing juvenile fish to escape trawl nets, the Council also developed restrictions preventing trawlers from using a double-walled codend. Further restrictions related to this objective include prohibitions on encircling the whole of a bottom trawl net with chafing gear and restrictions on the minimum mesh size of pelagic trawl

chafing gear (16 inches)''. Given the PCGFMP bycatch mitigation measures added under Amendment 18, SFD recommended narrowing the scope of the EA by removing the alternative for unrestricted use of chafing gear. SFD also requested the addition of a new alternative in the EA. The new alternative was to revise the regulations to be consistent with the midwater trawl chafing gear requirements that had been in place prior to 2007 and which represented gear in use in the fishery. The difference between the new SFD requested alternative and No Action was that the new alternative would allow chafing gear to cover the full length of a codend rather than restricting it to the last 50 meshes (No Action); all other provisions were the same. In addition, SFD requested that the Council reconsider its recommendation of a Final Preferred Alternative at the Council's November 2012 meeting following review of an analysis that included the new alternative. In response, the Council recommended removing the unrestricted alternative from the EA and adding the new SFD requested alternative with reconsideration of the new alternative at its November meeting. In addition, the Council recommended adding a variation of the new alternative consistent with a Groundfish Advisory Panel (GAP) request for unrestricted chafing section lengths and the allowance for chafing attachment to be either under or over the codend riblines.

At the Council's November 2012 meeting, a preliminary EA was available. The EA contained three alternatives: (1) No Action, (2) Alternative 1, to amend the midwater trawl gear restrictions to allow for greater chafing gear coverage on the codend consistent with the Alaska groundfish fishery regulations, and (3) Alternative 2, to reinstate the pre-2007 regulations by allowing the full length of the codend to be covered. Two sub-options were considered for Alternative 2. Alternative 2A would eliminate the restrictions on the length of each chafing panel (50 meshes) and allow chafing gear to be attached either under or over the ribelines of the codend; and, Alternative 2B would retain the chafing panel length restrictions. Alternative 2B is the status quo gear restriction currently used in the fishery.

During public comment members of the fishing industry spoke in favor of less restrictive chafing gear measures. However, one commenter raised concerns about potential negative impacts on ESA-listed eulachon, ecosystem prey species, and essential fish habitat (EFH). This same commenter also noted that the Alaska groundfish regulations may have fewer chafing gear restrictions for pelagic trawl gear, but indicated that the Alaska groundfish regulations do have other more restrictive regulations pertaining to the performance of midwater trawl gear that are intended to mitigate possible negative impacts on forage fish and EFH. After considering comments from the advisory bodies and the public, the Council recommended implementation of Alternative 1 with modifications recommended by the GAP (Agenda Item 1.5.b, November 2012). The GAP recommended modifying the language of Alternative 1 slightly to clarify that attaching the chafing gear inside or outside the riblines and straps should be allowed.

**Non-Whiting Midwater Trawl**

The chafing gear changes proposed by this action would apply to all midwater trawl gear regardless of the target species. Although the Council initially considered the changes in respect to the Pacific whiting fishery, at its September 2012 meeting the Council confirmed its intent for the changes to apply to all midwater trawl gear. In the 1990s, midwater trawl gear was used to target yellowtail, widow, and chilipepper rockfish. Since 2002, when several species that co-occur with the target species were declared overfished, midwater targeting for species other than Pacific whiting was eliminated or in the case of chilipepper rockfish restricted to waters seaward of the Rockfish Conservation Areas (RCAs). In 2012, widow rockfish was declared rebuilt. In 2013, the Annual Catch Limits (ACLs) for both widow rockfish and bocaccio were increased over 2012. The increased ACLs for widow rockfish and bocaccio are likely to lead to greater use of midwater trawling by vessels targeting non-whiting species.

Midwater trawl gear is generally not designed to touch the ocean bottom, but can be effectively used off-bottom or pelagically to target groundfish species that ascend above the ocean floor. Because the proposed action provides greater flexibility for protecting the portions of the codend that are subject to wear from contact with the seafloor, an increased number of non-whiting vessels may choose to increase chafing gear coverage and use midwater trawl gear.

Limited data are available to understand how the non-whiting midwater trawl fishery might develop and the depths, times, and areas where the fishery is likely to occur. The current shorebased trawl IFQ fishery is very different from the trip limit management structure that was in place the late 1990s. The midwater trawl fishery that emerges from the shorebased IFQ fishery could be very different from the fishery that historically occurred, as different sized midwater nets and codends may be used, and vessels may fish in different areas and at different times of the year or they may target a different array of species.

**Tribal Fishery**

The chafing gear requirements would affect the tribal fishers using midwater trawl gear to fish in their usual and accustomed fishing areas. At this time, the Makah Tribe is the only tribe that conducts a midwater trawl fishery with trips targeting Pacific whiting and targeting non-whiting. The non-whiting fishery targets yellowtail rockfish. Because the proposed measures are to liberalize the current chafing gear restrictions, vessels fishing in the tribal sector may choose to continue using their current codends or modify their gear.

**Environmental Impacts of the Proposed Action**

The primary environmental impacts from the allowance for greater chafing gear coverage of midwater trawl codends are the possible increase in the catch of small fish, such as forage fish, and changes in contact with EFH bottom habitat within the trawl RCAs (where bottom trawl has been prohibited since 2002, changing the baseline environment considered in previous NEPA documents on trawl gear impacts). Between 2006 and 2011, the most common forage fish species observed in the at-sea (MS and CP coops) and tribal sectors targeting Pacific whiting with midwater trawl gear were squid, American shad, jack mackerel, shortbelly rockfish, Pacific herring, Pacific mackerel, lanternfish, Pacific sardine, and a variety of smelts including eulachon. Relative to the catch of Pacific whiting, observer data shows that forage fish species make up a low proportion of the overall catch and are expected to continue at levels similar to those observed in recent years. Relative to vessels using midwater trawl gear to target non-whiting species, the change in catch of small fish is difficult to project given the lack of historical total catch (discard plus retained catch) data and because the emerging fishery may be substantially different from historical fisheries. Even with greater chafing coverage on the codend, midwater trawl nets are constructed with very large mesh in the forward sections where

small fish may escape capture. The incidental catch of non-groundfish species will continue to be monitored (all trawl vessels are required to carry at least one groundfish observer) and catch will be evaluated on an annual basis.

Midwater trawls, also called pelagic or off-bottom trawls, are trawls where the doors may be in contact with the seabed (although they usually are not), while the footrope generally remains suspended above the seafloor, but may contact the bottom on occasion. Midwater trawls are generally towed above the ocean floor, although they may be used near the bottom. When fishing close to the bottom, the footropes of pelagic trawls can cause benthic animals to be separated from the bottom. Because of the large mesh in the forward sections of the net, most bottom animals would likely fall through the mesh and immediately be returned to the ocean floor. Sessile organisms that create structural habitat may be uprooted or pass under the footropes of midwater trawls towed close to the bottom, while those organisms that are more mobile or attached to light substrates may pass over the footrope with little damage. The unprotected footrope on midwater trawls effectively precludes the use of the nets on rough or hard substrates, meaning that they are not expected to affect the more complex habitats that occur on those substrates.

Although the trawl RCAs were intended to minimize interactions between trawl vessels and overfished rockfish species, the trawl RCAs have effectively removed groundfish bottom trawling from a large portion of the EEZ since 2002. Because the RCAs have been closed to bottom trawling for over 10 years, the seafloor habitats have likely recovered considerably from pre-RCA years. In other words, it was necessary for the analysis in the EA to consider the effects of the proposed action on a recovered EFH habitat. Although the boundaries of the RCAs have varied between years, north of 40°10′ N. latitude the RCAs have continuously restricted much of the bottom trawling in waters between 75 and 200 fm. The proposed action would allow increased chafing coverage for all midwater trawl gear. With increased intensity from vessels targeting whiting plus non-whiting vessels, it is expected that more vessels will be making ''occasional'' contact with the benthic organisms and habitat than has been seen with the midwater fishery targeting Pacific whiting. Similarly, effort may increase in EFH conservation areas where only midwater trawling is allowed, and where bottom trawling has been prohibited since 2005.

**Double-walled codends**

Regulations at § 660.130(b)(1) specifically prohibit the use of double-walled codends. A double-walled codend is a codend constructed of two walls (layers) of webbing. To prevent chafing gear from being used to create the effect of a double-walled codend, NMFS is considering clarifying the prohibition relative to chafing gear in the final regulations.

**Classification**

NMFS has made a preliminary determination that the proposed action is consistent with PCGFMP, the MSA, and other applicable law. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

An EA was prepared for this action. The EA includes socio-economic information that was used to prepare the RIR and IRFA. The EA is available on the Council's Web site at *http://www.pcouncil.org/*. This action also announces a public comment period on the EA.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget (OMB) has determined that this proposed rule is not significant.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (see **ADDRESSES**) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows: The Pacific Fishery Management Council and NMFS are proposing to liberalize current midwater trawl chafing gear regulations. In revising these regulations, the Council and NMFS have reviewed the differences of how the regulations should be interpreted and enforced and current industry practices. NMFS and the Council have also reviewed the current status of species being harvested and similar regulations for Alaska fisheries. With the recent implementation of the Pacific Coast Groundfish trawl rationalization program, NMFS and the Council took into account the increased potential to target rebuilt rockfish species with midwater gear. In proposing these regulations, NMFS and Council also considered the effects upon essential fish habitat, protected and ESA listed species, the harvest of small fish (groundfish and non-groundfish including forage and juvenile fish), and the effects of other conservation and management measures contained in the PCGFMP. NMFS and the Council also considered the economic effects of various chafing gear alternatives, particularly upon harvesting vessels.

Fishermen use chafing gear to protect their trawl nets, particularly codends, from abrasion. Regulations specify the limits on the use of chafing gear panels. The main differences among the alternatives reviewed by NMFS and the Council related to how much of the circumference and length of the codend could be covered and what size of chafer panels could be used. The No Action alternative (existing regulations) would limit chafing gear to the very end of the codend (the last 50 mesh lengths) and to 50 percent of the codend's circumference via a single panel. Under Alternative 1 (Council Preferred Alternative), fishermen would have the option of covering up to 100 percent of the length of the codend and up to approximately 75 percent of the codend's circumference through the use of a single panel or multiple panels. Alternative 2A differs from Alternative 1 by limiting coverage to 50 percent of the codend circumference. Fishermen would have the option of covering up to 100 percent of the length of the codend and up to 50 percent of the codend's circumference with a single panel or multiple panels.

Alternative 2B (Status Quo) differs from Alternative 1 in circumference coverage and from Alternative 2A in panel size. Under Alternative 2B, fishermen would have the option of covering up to 50 percent of the length of the codend and up to 50 percent of the codend's circumference; however, no single panel could cover more than 50 meshes of the codend. For example, to cover the length of a 500 mesh codend, 10 panels would be required. This alternative is labeled the ''Status Quo Alternative'' as it reflects the midwater chafing gear restrictions that were in effect during the 2006 season. According to the EA, ''Up until 2011, the current regulations were interpreted and enforced in a manner that allowed fishers to cover the entire length of their codends using a series of 50-mesh panels, provided the panels did not exceed 50 percent of the codend circumference and the terminal end of each panel was unattached to allow

small fish to escape. Recently, these regulations have been reinterpreted as allowing the use of only a single 50-mesh panel (see Section 1.4 of the EA for a complete history). This reinterpretation has not yet been enforced because it would entail a sudden and unexpected change in regulatory enforcement and require industry to incur expenses while deliberations are underway on whether to realign the regulations with standing policy or change the policy.'' The Council did consider eliminating all chafing gear restrictions. The Council rejected this option because it could have allowed for up to 100 percent chafing gear coverage of the net, including the main body and the codend, which could be damaging to biota escaping the net and would likely be in conflict with the PCGFMP's Amendment 18 bycatch mitigation program.

This proposed rule would affect those vessels that use midwater trawl gear in Pacific Coast groundfish fisheries. Annual midwater whiting revenues were about $47 million in both 2011 and 2012 and non-whiting midwater trawl revenues averaged about $500,000 during this period. Nine catcher processors, 19 mothership catcher vessels, and 27 shoreside vessels participated in these fisheries during 2012 and 2013. Three different vessels operated in the non-tribal non-whiting shoreside midwater fishery—three in 2012 and one in 2013. The tribal fleet consists of 4–5 tribal whiting vessels of which 2–3 per year also fish in the Alaska groundfish fisheries. Five tribal midwater vessels operate in the tribal yellowtail rockfish fishery. These vessels do not participate in the Alaska groundfish fishery. As part of the permitting processes for 2014, NMFS asked non-tribal vessel owners to assess whether they are small businesses based on following criteria: A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $19.0 million for all its affiliated operations worldwide. Tribal vessels are considered small businesses. After taking into account vessels that fish in multiple midwater fisheries and affiliations, there are 28 midwater businesses, 22 of which are small businesses.

The costs to replace a midwater net including its codend are as high as $400,000. Codends for midwater trawling range in cost from $10,000 to $200,000 each. Uses of chafing gear can double the life of a net. The number of tows, tow size, and other features of the vessel and its operations affect the life of a net. With chafing gear covering the side and bottom panels of a midwater codend, nets can be used for 5 to 15 years or longer if vessel owners periodically replace the chafer panels. The EA assessed changes in costs and revenues and by fishery (tribal, non-tribal, whiting, and pelagic). Expected differences in net costs between whiting and pelagic fisheries are likely to be small; therefore, the EA used the costs associated with the Pacific whiting fishery to analyze the alternatives. Codends used for the pelagic rockfish fishery may be the same size or smaller, but are unlikely to be larger than the codends used for whiting. The useful life of a net used just for pelagic rockfish may be longer than a net used for Pacific whiting, because the volume of fish handled by a single codend will likely be smaller, on average. For this reason, the costs of whiting codends are used as a proxy, but should be considered an upper bound on the cost differences that might be expected for the midwater pelagic rockfish fishery.

Adoption of any alternative other than the No-Action alternative will result in increased codend useful life because of greater protection from onboard abrasion sources and some wear reduction on those occasions when seafloor contact occurs. Under the No Action alternative, vessel owners will likely have to modify the chafing gear they use so that the gear is compliant. As a result, their nets will have the least amount of protection and thus have to be replaced more often. Currently, fishermen are using gear compliant with Alternative 2B, and so there would be no additional costs associated with this alternative. The gear currently used in the fishery (compliant with Alternative 2B) would also be compliant with the other action alternatives. The other alternatives also would not necessarily require additional expenditures on gear.

Alternative 1 is the Council's Final Preferred Alternative (FPA). Alternative 1 allows fishermen more flexibility as up to 75% of the cod-end's circumference could be covered, comports with the chafing gear currently used by the majority of the fleet in both Pacific Coast and Alaska fisheries, and provides the best protection for expensive codends. The EA states: ''Fishers that only participate in the Pacific Coast whiting fishery would have a one-time cost of $5,000 to $10,000 to bring their codends into compliance. For fishers that fish in Alaska and the Pacific Coast fishery they would likely either obtain an additional codend for use in the Pacific Coast fishery or incur an annual chafer replacement cost of between $5,000 and $10,000 to limit their coverage to the terminal 50 net meshes. Data in the EA shows that 62 percent of Pacific Coast whiting vessels also fished off Alaska between 2004 and 2010. These along with most other whiting vessels likely have codend chafing gear on their codends that is noncompliant with Pacific Coast whiting fishery regulations, as they were recently reinterpreted. The increased codend replacement cost under the PFMC Preferred Alternative (Alternative 1) could be as high at $9,500 per year with no chafer replacement after about 10 years to extend codend useful life or $7,321 per year with chafer replacement after about 10 years of use. The replacement cost under the other two action alternatives would be expected to be higher, but very close to Alternative 1. This is because of lower amount of chafer coverage provided under those alternatives (50 percent of codend circumference) compared to Alternative 1 (up to 75 percent of codend circumference).'' For perspective, the EA assessed the costs of the No-Action Alternative relative to Pacific whiting revenues and found them to be about 2 percent of the 2011 average ex-vessel value in the shoreside fishery, about 1 percent of that value for the mothership sector catcher vessels and about 1 percent of the that value for catcher processors. (Note that these revenues exclude revenues from other Pacific Coast and Alaska fisheries. Inclusion of such revenues would lower these percentages.)

Increased chafing gear may potentially increase the catch of small or undersized fish. The EA finds under the trawl catch share program, vessels have substantial incentive to avoid the catch of small, unmarketable groundfish for which quota is required. For each pound of these fish caught, fishermen must use a pound of quota, forgoing their opportunity to use that quota to cover catch for which they can get paid. The effect of catching small fish which must be covered with quota is the reduction of vessel revenue. On this basis, regardless of the amount and continuity of chafing gear allowed on a codend, the incentive of fishermen is to configure the gear to avoid the catch of target fish of small size. Thus, they may not use the maximum amount of chafing gear, minimum mesh size, etc. to the degree allowed under any particular alternative. Liberalizing the chafing gear regulations increases the flexibility fishermen have in configuring their gear

and may allow fishermen to develop other means for avoiding small size fish. A review of various discussions in the EA suggests that processors and fishing communities will not be negatively impacted by implementation of Alternatives 1, 2A, or 2B. The No-Action alternative will impose costs on the fishery, reduce vessel profits and may have a small but likely negligible effect on communities. Increased small fish landings may have a small negligible effect on processors.

Based on the discussion above, NMFS has determined that this proposed rule would not have a significant economic effect on a substantial number of small entities. This rule would revise existing regulations to conform to current industry chafing gear practices while increasing the flexibility of vessel owners to make chafing gear modifications according to their own individual operations and needs. There are no significant alternatives to the proposed rule that accomplish the stated objectives and that minimize the impact of the proposed rule on small entities. For transparency purposes, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The proposed regulations, which have a direct effect on the tribes, were deemed by the Council as ''necessary or appropriate'' to implement the PCGFMP as amended.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the PCGFMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the PCGFMP is not likely to jeopardize the continued existence of any of the affected species. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On January 22, 2013, NMFS requested the reinitiation of the biological opinion for listed salmonids to address changes in the fishery, including the trawl rationalization program and the emerging midwater trawl fishery. The consultation will not be completed prior to publication of this proposed rule to modify chafing gear regulations for the Pacific whiting fishery. NMFS has considered the likely impacts on listed salmonids for the period of time between the proposed rule and, if appropriate, final rule and the completion of the reinitiated consultation relative to sections 7(a)(2) and 7(d) of the ESA. On December 18, 2013, NMFS determined that ongoing fishing under the PCGFMP, assuming that the proposed chafing gear modifications are implemented in early 2014, prior to the completion of the consultation would not be likely to jeopardize listed salmonids or result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any necessary reasonable and prudent alternatives.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions. With this rulemaking, an informal consultation on eulachon was initiated on January 21, 2013. NMFS considered whether the 2012 opinion should be reconsidered for eulachon in light of new information from the 2011 fishery and the proposed chafing gear modifications and determined that information about the eulachon bycatch in 2011 and chafing gear regulations did not change the anticipated extent of effects of the action, or provide any other basis to reinitiate the December 7, 2012 biological opinion. Therefore, the December 7, 2012 biological opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 and no further consultation is required at this time.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

This proposed rule would not alter the effects on marine mammals over what has already been considered for the fishery. West Coast pot fisheries for sablefish are considered Category II fisheries under the MMPA's List of Fisheries, indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed

in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, February 27, 2012). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of three years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553, September 4, 2013).

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian fisheries.

Dated: March 13, 2014.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

■ 2. In § 660.130, paragraphs (b)(2–)(4) and the introductory text of paragraph (c) are revised as follows:

### § 660.130 Trawl fishery—management measures.

* * * * *

(b) * * *

(2) *Mesh size.* Groundfish trawl gear, including chafing gear, must meet the minimum mesh size requirements in this paragraph. Mesh size requirements apply throughout the net. Minimum trawl mesh sizes are: Bottom trawl, 4.5 inches (11.4 cm); midwater trawl, 3.0 inches (7.6 cm). Minimum trawl mesh size requirements are met if a 20-guage stainless steel wedge, less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

(3) *Bottom trawl gear.*—(i) *Large footrope trawl gear.* Lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 19 inches (48 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(ii) *Small footrope trawl gear.* Lines or ropes that run parallel to the footrope may not be augmented with material encircling or tied along their length such that they have a diameter larger than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(A) *Selective flatfish trawl gear.* Selective flatfish trawl gear is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be less than 105 ft (32.26 m) in length. The headrope must be not less than 30 percent longer than the footrope. The headrope shall be measured along the length of the headrope from the outside edge to the opposite outside edge. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of part 660, subpart D.

(B) [Reserved]

(iii) *Chafing gear restrictions for bottom trawl gear.* Chafing gear may encircle no more than 50 percent of the net's circumference and may be in one or more sections. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear must be attached outside any riblines and restraining straps.

(4) *Midwater (pelagic or off-bottom) trawl gear.* Midwater trawl gear must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere on any part of the net. The footrope of midwater gear may not be enlarged by encircling it with chains or by any other means. Ropes or lines running parallel to the footrope of midwater trawl gear must be bare and may not be suspended with chains or any other materials. Sweep lines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net.

(i) *Chafing gear restrictions for midwater trawl gear.* Chafing gear may cover the bottom and sides of the codend in either one or more sections. Only the front edge (edge closest to the open end of the codend) and sides of each section of chafing gear may be attached to the codend; except at the corners, the terminal edge (edge closest to the closed end of the codend) of each section of chafing gear must not be attached to the net. Chafing gear is not permitted on the top codend panel except as provided in paragraph (b)(4)(ii) of this section.

(ii) *Chafing gear exception for midwater trawl gear.* A band of mesh (a ''skirt'') may encircle the net under or over transfer cables, lifting or splitting straps (chokers), riblines, and restraining straps, but must be the same mesh size and coincide knot-to-knot with the net to which it is attached and be no wider than 16 meshes.

(c) *Restrictions by limited entry trawl gear type.* Management measures may vary depending on the type of trawl gear (i.e., large footrope, small footrope, selective flatfish, or midwater trawl gear) used and/or on board a vessel during a fishing trip, cumulative limit period, and the area fished. Trawl nets may be used on and off the seabed. For some species or species groups, Table 1 (North) and Table 1 (South) of this subpart provide trip limits that are specific to different types of trawl gear: Large footrope, small footrope (including selective flatfish), selective flatfish, midwater, and multiple types. If Table 1 (North) and Table 1 (South) of this subpart provide gear specific limits for a particular species or species group, it is unlawful to take and retain, possess or land that species or species group with limited entry trawl gears other than those listed. The following restrictions are in addition to the prohibitions at § 660.112(a)(5).

* * * * *

[FR Doc. 2014–06058 Filed 3–18–14; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 79, No. 53

Wednesday, March 19, 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

### Farm Service Agency

### Information Collection; Customer Data Worksheet Request for Service Center Information Management System (SCIMS) Record Changes

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension of a currently approved information collection to support Customer Data Worksheet Requests for record changes in the Service Center Information Management System (SCIMS) that contains producers' personal information. Specifically, FSA is requesting comment on the form AD–2047, ''Customer Data Worksheet Request for SCIMS Record Change.'' FSA is using the collected information in support of documenting critical producer data changes (customer name, current mailing address and tax identification number) in SCIMS made at the request of the producer to correct or update their information. The collection of critical producer data is being used to update existing producer record data and document when and who initiates and changes the record in SCIMS.

**DATES:** We will consider comments that we receive by May 19, 2014.

**ADDRESSES:** We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to: *www.regulations.gov*. Follow the online instructions for submitting comments.
- Mail: Kerry Sefton, Agricultural Program Specialist, USDA, FSA, STOP 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Kerry Sefton at the above address.

**SUPPLEMENTARY INFORMATION:**

*Title:* Customer Data Worksheet Request for SCIMS Record Changes.

*OMB Control Number:* 0560–0265.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The information collection is necessary to effectively monitor critical producer data changes made in the SCIMS at the request of the producer to correct or update their information. The form AD–2047, Customer Data Worksheet Request for SCIMS Record Change, is used to collect information from producers to make changes to their information in SCIMS. The necessity to monitor critical producer data changes in the SCIMS database is a direct result of the OMB Circular A–123 Management's Responsibility for Internal Control, which requires effective internal controls be in place for Federal programs. An FSA team was established and reviewed and documented key controls related to all material producer accounts. FSA also included the analysis on a review of the SCIMS.

*Estimated Average Time to Respond:* Public reporting burden for collection of this information is estimated to average .17 hours per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

*Type of Respondents:* FSA, NRCS, and RD customers currently residing in SCIMS.

*Estimated Number of Respondents:* 51,750.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Annual Number of Responses:* 51,750.

*Estimated Total Annual Burden Hours:* 8,798.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on March 10, 2014.

**Juan M. Garcia,**

*Administrator, Farm Service Agency.*

[FR Doc. 2014–06001 Filed 3–18–14; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Black Hills National Forest Advisory Board

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to re-establish the Charter of the Black Hills National Forest Advisory Board.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service intends to re-establish the Charter of the Black Hills National Forest Advisory Board (Board). The purpose of the Board is to obtain advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, forest health including fire management and mountain pine beetle infestations, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest wide implications.

**FOR FURTHER INFORMATION CONTACT:** Scott Jacobson, Committee Management Officer, USDA, Black Hills National Forest by telephone at 605–673–9216,

by fax at 605–673–9208, or by email at *sjjacobson@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:** The Black Hills National Forest Advisory Board is a non-scientific program advisory Board established by the Secretary of Agriculture in 2003 to provide advice and counsel to the U.S. Forest Service, Black Hills National Forest, in the wake of increasingly severe and intense wild fires and mountain pine beetle epidemics.

The purpose of the Board is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, travel management, forest monitoring and evaluation, and site-specific projects having forest-wide implications. The Board also serves to meet the needs of the Recreation Enhancement Act of 2005 as a recreation resource advisory board (RRAC) for the Black Hills of South Dakota. The Board provides timely advice and recommendations to the regional forester through the forest supervisor regarding programmatic forest issues and project-level issues that have forest-wide implications for the Black Hills National Forest.

The Board meets approximately ten times a year, with one month being a field trip, held in August and focusing on both current issues and the educational value of seeing management strategies and outcomes on the ground. This Board has been established as a truly credible entity and a trusted voice on forest management issues and is doing often astonishing work in helping to develop informed consent for forest management.

For years, the demands made on the Black Hills National Forest have resulted in conflicts among interest groups resulting in both forest-wide and site-specific programs being delayed due to appeals and litigation. The Board provides a forum to resolve these issues to allow for the Black Hills National Forest to move forward in its management activities. The Board is believed to be one of the few groups with broad enough scope to address all of the issues and include all of the jurisdictional boundaries.

**Significant Contributions**

The Board's most significant accomplishments include:

1. A 2004 report on the Black Hills Fuels Reduction Plan, a priority following the major fires including the 86,000 acre Jasper Fire in 2000;
2. A 2004 initial Off-Highway Vehicle Travel Management Subcommittee report;
3. A report on their findings regarding the thesis, direction, and assumptions of Phase II of our Forest Plan produced in 2005;
4. The Invasive Species Subcommittee Report in 2005 covering recommendations to better stop invasive species from infiltrating the Forest;
5. A final Travel Management Subcommittee Report in 2006 in which the Board made 11 recommendations regarding characteristics of a designated motor vehicle trail system, the basis for our initial work to prepare our Motor Vehicle Use Map in 2010–2011;
6. The Board's annual work to attract funding through grants based on the Collaborative Landscape Forest Restoration Program (CFLRP), a program of the Secretary of Agriculture *CFLR* Program to encourage the collaborative, science-based ecosystem restoration of priority forest landscapes;
7. A letter to the Secretary and the Chief of the Forest Service to work, restore and maintain open space for wildlife habitat and recreation needs like snowmobile trails; and
8. The annual reports to the Secretary detailing the Board's activities, issues, and accomplishments.

The Board is deemed to be among the most effective public involvement strategies in the Forest Service and continues to lead by example for Federal, State, and local government agencies working to coordinate and cooperate in the Black Hills of South Dakota and Wyoming.

**Background**

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II); notice is hereby given that the Secretary of Agriculture intends to re-establish the charter of the Black Hills National Forest Advisory Board. The Board provides advice and recommendations on a broad range of forest planning issues and, in accordance with the Federal Lands Recreation Enhancement Act (Public Law 108–447 (REA)), more specifically will provide advice and recommendations on Black Hills National Forest recreation fee issues (serving as the RRAC for the Black Hills National Forest). The Board membership consists of individuals representing commodity interests, amenity interests, and State and local government.

The Board has been determined to be in the public interest in connection with the duties and responsibilities of the Black Hills National Forest. National forest management requires improved coordination among the interests and governmental entities responsible for land management decisions and the public that the agency serves.

**Advisory Committee Organization**

The Board consists of 16 members that are representative of the following interests (this membership is similar to the membership outlined by the Secure Rural Schools and Community Self Determination Act for Resource Advisory Committees (16 U.S.C. 500, et seq.)):

1. Economic development;
2. Developed outdoor recreation, off-highway vehicle users, or commercial recreation;
3. Energy and mineral development;
4. Commercial timber industry;
5. Permittee (grazing or other land use within the Black Hills area);
6. Nationally recognized environmental organizations;
7. Regionally or locally recognized environmental organizations;
8. Dispersed recreation;
9. Archeology or history;
10. Nationally or regionally recognized sportsmen's groups, such as anglers or hunters;
11. South Dakota State-elected offices;
12. Wyoming State-elected offices;
13. South Dakota or Wyoming county- or local-elected officials;
14. Tribal government elected or-appointed officials;
15. South Dakota State natural resource agency official; and
16. Wyoming State natural resource agency official.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee. The Committee will meet approximately nine times, and will attend at least one summer field tour as designated by the Designated Federal Officer (DFO).

The members of the Board will elect and determine the responsibilities of the Chairperson and the Vice-Chairperson. In the absence of the Chairperson, the Vice-Chairperson will act in the Chairperson's stead. The Forest Supervisor of the Black Hills National Forest serves as the Designated Federal Officer (DFO) under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App. II).

Members will serve without compensation, but may be reimbursed for travel expenses while performing duties on behalf of the Board, subject to approval by the DFO.

Equal opportunity practices are followed in all appointments to the

Board in accordance with USDA policies. To ensure that the recommendations of the Board have been taken into account the needs of diverse groups, served by the Black Hills National Forest, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the needs of men and women of all racial and ethnic groups, and persons with disabilities.

Dated: March 11, 2014.

**Gregory Parham,**

*Assistant Secretary for Administration.*

[FR Doc. 2014–06070 Filed 3–18–14; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Angeles National Forest, California, Littlerock Reservoir Sediment Removal Project

**AGENCY:** Forest Service, (USDA).

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The USDA Forest Service (Forest Service) and the Palmdale Water District (District) will prepare a joint Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for sediment removal and construction of a grade control structure at Littlerock Reservoir, in Los Angeles County, California. The District has submitted an application to the Forest Service for a special use authorization for the project. The Forest Service is the lead Federal agency for the preparation of this EIS/EIR in compliance with the National Environmental Policy Act (NEPA), and the District is the lead State of California agency for the preparation of the EIS/EIR in compliance with the California Environmental Quality Act (CEQA).

The Littlerock Dam and Reservoir are located on Littlerock Creek, on National Forest System (NFS) lands managed by the Angeles National Forest. The project is approximately 10 miles southwest of the city of Palmdale, California. The Dam and Reservoir are operated and maintained by the District, pursuant to a Forest Service special use permit. The facilities serve both flood control and municipal water storage purposes. The Reservoir also provides recreational opportunities for boating, fishing, swimming, picnicking, and off-highway vehicle riding.

The proposed action would construct a grade control structure midway between the dam and the southern end of the Reservoir; remove sediment from the Reservoir to restore original capacity; and maintain capacity by conducting annual sediment removal through the life of the authorization, until 2037.

The Forest Service and the District invite written comments on the scope of this proposed project. In addition, the lead agencies give notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis are requested by April 15, 2014. One public information and scoping meeting will be held at the Palmdale Water District, March 25, 2014, 7:00 p.m., 2029 East Avenue Q, Palmdale, CA 93550, (661) 947–4111. The Draft EIS/EIR is expected in September 2014 and the Final EIS/EIR is expected March 2015.

**ADDRESSES:** To submit comments on the scope of the project or potential environmental impacts, or to request a copy of the Draft or Final EIS/EIR, or to be added to the project mailing list, please write to the Forest Service/Palmdale Water District c/o Aspen Environmental Group, 5020 Chesebro Road, Suite 200, Agoura Hills, CA 91301. Email communications should be sent to *LSRP@aspeneg.com,* and should include name and return address. Information about the project and the environmental review process will be posted on the Internet at: *http://www.palmdalewater.org/LSR.aspx.*

**FOR FURTHER INFORMATION CONTACT:** For additional information related to the proposed project on NFS lands, contact Lorraine Gerchas, Project Manager, Forest Service, Angeles National Forest at 701 North Santa Anita Avenue, Arcadia, CA 91006; *lmgerchas@fs.fed.us,* 626–574–5281. For additional information related to the project on non-NFS lands, contact Mr. Matt Knudson, Assistant General Manager, Palmdale Water District, 2029 East Avenue Q, Palmdale, CA 93550, *mknudson@palmdalewater.org,* (661) 456–1018.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Need

The purpose of the project is to restore the Reservoir to 1992 water storage and flood control capacity, and maintain that capacity through annual sediment removal. The purpose of the grade control structure is to allow for sediment removal and maintenance of reservoir capacity, while preserving habitat for the arroyo toad (*Anaxyrus californicus*). The Forest Service also has a need to respond to the District's application for a special use authorization.

### Proposed Action

The first component of the proposed project is construction of a grade control structure, to maintain the elevation of the reservoir bed by limiting upstream erosion. The grade control structure would be buried, with the top flush with, or slightly below, the existing reservoir bed. This mostly subterranean soil cement structure would span approximately 260 feet of channel (bank to bank) just downstream of Rocky Point. The maximum depth of the structure would be approximately 80 feet underground. The subterranean portion would extend downstream approximately 200 feet (in a downward stair-step design). Only the upper lip of the structure would be visible when the Reservoir level is lowered.

Upon completion of the grade control structure, the District would remove approximately 1,000,000 cubic yards (CY) of sediment to restore the 1992 capacity of the Reservoir. This initial removal of sediment would occur over approximately 10–15 years, between September and January each year. The final component is to remove annual accumulations of approximately 54,000 CY of sediment to maintain the capacity. Temporary annual closure of the Reservoir to public access would occur after Labor Day until seasonal water refill suspends removal efforts (estimated between mid-November and January). Excavation would occur just upstream of Littlerock Dam and extend approximately 3,700 feet upstream. The District's contractor would load sediment on a truck and transport it offsite to District-owned properties or locations accepting sediment for placement and spreading. These properties would be located within, or in close proximity to, the city of Palmdale. The District would seek reuse of the sediment on an annual basis prior to permanent disposal.

Annual restoration efforts would begin immediately following completion of sediment removal activities and would be completed prior to opening the Reservoir to public access. Disturbed areas outside the excavated portion of the Reservoir bed would be returned to pre-construction conditions or better. Native, locally collected plant material would be planted in areas where native vegetation was disturbed. At the completion of annual sediment removal activities, the District's contractor would remove all debris and repair project caused damage to existing parking areas, access roads, and travel paths.

**Possible Alternatives**

The Forest Service and the District have identified the following potential alternative to the proposed action:

*No Action Alternative:* Project activities would not occur and sediment would continue to accumulate upstream of Littlerock Dam. Reservoir capacity would be reduced by approximately 44 acre-feet annually. In the long term, Littlerock Reservoir would fill with sediment, eliminating its flood control and water storage capacity.

*Alternative 1:* Long-Term Closure of the Reservoir: The Reservoir would be closed to the public for 3–4 years while sediment is removed to achieve 1992 capacity. Capacity for water storage and flood control would be achieved more quickly, but would result in a longer term public closure. Once Reservoir capacity has been restored, maintenance activities, construction of the grade control structure, and short-term, seasonal closures would be the same as the Proposed Action.

*Alternative 2:* Slurry Excavation: Slurry and water return pipelines (each approximately 6–10 miles long) between the Reservoir and disposal quarries would be constructed to transport sediment off-site. Sediment would be disposed at exhausted quarry pits within Palmdale along Avenue T, approximately 6-miles northeast of the Reservoir. Sediment stockpile and processing, and water collection and pumping facilities would be required at the quarry site(s). The feasibility of long-term agreements with quarry operators and storage capacities of the quarries is unknown at this time. Maintenance of reservoir capacity and construction of the grade control structure would be the same as the Proposed Action.

**Responsible Official**

The Forest Service Responsible Official for the preparation of the EIS/EIR is Thomas A. Contreras, Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006.

**Nature of Decision To Be Made**

The Responsible Official will decide whether to permit the proposed activities on NFS lands, or an alternative to the proposed project. If approved, the Forest Supervisor will also decide what mitigation measures and monitoring will be required. The Forest Supervisor has authority to approve only the portions of the project on NFS lands.

**Preliminary Issues**

The EIS/EIR will present analyze the environmental impacts of the proposed project and the alternatives, and will identify mitigation measures to lessen environmental impacts. The EIS/EIR will focus on issues for which potentially significant impacts are identified, including: air quality; biological resources; cultural resources; geology and soils; hazardous materials; land use and public recreation; traffic; and water resources.

**Permits or Licenses Required**

The Forest Supervisor, Angeles National Forest, would issue a Special Use Authorization for the proposed action or an alternative. Additional permits that may be required include: a Permit to Operate issued by the Antelope Valley Air Quality Management District, a National Pollutant Discharge Elimination System General Construction Permit issued by the Lahontan Regional Water Quality Control Board, a Section 404 Permit and Section 401 Certification (per the Clean Water Act) issued by the U.S. Army Corps of Engineers, Section 2081 Incidental Take Permit issued by the California Department of Fish and Wildlife, and a Streambed Alteration Agreement (Section 1602 and 1605 permits of the California Fish and Game Code) issued by the California Department of Fish and Wildlife. Local traffic control and encroachment permits may be required from the Los Angeles County Department of Public Works or the California Department of Transportation.

**Comment Requested**

This notice initiates the scoping process which guides the development of the EIS/EIR. The Forest Service and the District are seeking public and agency comment on the proposed project to identify major issues to be analyzed in depth and assistance in identifying potential alternatives to be evaluated.

The proposed project implements the 2006 Angeles National Forest Land Management Plan, and is subject to project level, pre-decisional administrative review pursuant to 36 CFR 218, Subparts A and B. Comments received on this notice or in subsequent environmental reviews, including names and addresses of those who comment, will be considered as part of the public record on this proposed project, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to object to the subsequent decision. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, without names and addresses, within a specified number of days.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A Draft EIS/EIR will be prepared for comment. The comment period on the draft EIS/EIR will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS/EIR must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS/EIR stage but that are not raised until after completion of the Final EIS/EIR may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day EIS/EIR comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS/EIRS.

To assist the Forest Service in identifying issues and concerns on the proposed action, comments should be as specific as possible. Comments may also address the adequacy of the Draft EIS/EIR or the merits of the alternatives discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR 1503.3) in addressing these points.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 22.

Dated: March 12, 2014.

**Thomas A. Contreras,**

*Forest Supervisor.*

[FR Doc. 2014–06011 Filed 3–18–14; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Public Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of Agriculture, Forest Service will hold a workshop entitled ''Cellulose Nanomaterial—A Path Towards Commercialization'' on May 20–21, 2014 in collaboration with and co-sponsored by the National Nanotechnology Initiative (NNI). The workshop is intended to bring together executives and experts from the federal government, academia, and private sector to identify critical information gaps that need to be filled and technical barriers that need to be overcome to enable the commercialization of cellulose nanomaterials. Workshop presenters and participants will identify pathways for the commercialization of cellulosic nanomaterials and the workshop will facilitate communication across multiple industry sectors; between users and cellulose nanomaterials producers; and among government, academia and industry to determine common challenges. An important goal of the workshop is to identify the critical information gaps and technical barriers in the commercialization of cellulose nanomaterials from the perspective of nanocellulose user communities. The outcomes of the workshop are expected to be used to guide federal government and private sector investments in nanocellulose research and development. The workshop also supports the announcement last December by USDA Secretary Thomas Vilsack regarding the formation of a public private-partnership to rapidly advance the commercialization of cellulose nanomaterials. The USDA announcement can be found at: *http://www.usda.gov/wps/portal/usda/usdahome?contentid=2013%2F12%2F0235.xml.*

This workshop also supports the goals of the NNI Sustainable Nanomanufacturing Signature Initiative.

**DATES:** The Workshop will be held Tuesday, May 20, 2014 from 8:00 a.m. until 5:00 p.m. and on Wednesday, May 21, 2014 from 8:00 a.m. until 5:00 p.m.

**ADDRESSES:** The workshop will be held at the USDA Conference & Training Center, Patriots Plaza III, 355 E Street SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Cheryl David-Fordyce at National Nanotechnology Coordination Office, by telephone 703–292–2424 or email *cdavid@nnco.nano.gov.* Additional information about the meeting, including the agenda, is posted at *http://www.nano.gov/NCworkshop.*

*Registration:* Registration opens on March 17, 2014 at *http://www.nano.gov/NCworkshop.* Due to space limitations, pre-registration for the workshop is required. Written notices of participation by email should be sent to *cdavid@nnco.nano.gov* or mailed to Cheryl David-Fordyce, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230. Please provide your full name, title, affiliation and email or mailing address when registering. Registration is on a first-come, first-served basis until capacity is reached. Written or electronic comments should be submitted by email to *cdavid@nnco.nano.gov* until close of business April 30, 2014.

*Meeting Accomodations:* Individuals requiring special accommodation to access this public meeting should contact Cheryl David-Fordyce 703–292–2424 at least ten business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 6, 2014.

**Theodore H. Wegner,**

*Assistant Director.*

[FR Doc. 2014–05352 Filed 3–18–14; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Opportunity for Designation in Unassigned Areas of Southeast Texas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons or governmental agencies interested in providing official services in unassigned areas of Southeast Texas to submit an application for designation.

**DATES:** Applications and comments must be received by April 18, 2014.

**ADDRESSES:** Submit applications and comments concerning this Notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISonline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Dexter Thomas, Acting Chief of Staff, USDA, GIPSA, OA, Room 2055–S, 1400 Independence Avenue SW., Washington, DC 20250.
- *Fax:* Dexter Thomas, 202–205–9237.
- *Email: R.Dexter.Thomas@usda.gov.*

*Read Applications and Comments:* All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

**FOR FURTHER INFORMATION CONTACT:** Dexter Thomas, 202–720–6529 or *R.Dexter.Thomas@usda.gov.*

**SUPPLEMENTARY INFORMATION:** GIPSA previously announced an opportunity for designation in unassigned areas of Southeast Texas in the **Federal Register** on September 27, 2013 (78 FR 59647). Applications were due by October 28, 2013. GIPSA received seven comments, representing five grain companies and two trade associations. All commenters supported Gulf Country Grain Inspection Service, Inc. (Gulf Country) designation for the geographical area announced in the **Federal Register** on September 27, 2013. Five commenters specifically recommended that Gulf Country's designation be expanded to include the Rio Grande Valley geographical area in South Texas. Two of those five commenters stated that Gulf Country could provide an equal or greater level of service at a better cost than GIPSA. Accordingly, GIPSA is announcing the opportunity for designation for unassigned areas of Southeast Texas including additional geographical area in South Texas.

Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better

able than any other applicant to provide such official services (7 U.S.C. 79 (f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

**Areas Open for Designation**

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following unassigned area is available for designation.

*In Texas*

Bounded on the north by northern Lampasas, Coryell, McLennan, Limestone, Freestone, Anderson, Cherokee, Nacogdoches, San Augustine, and Sabine County Line east to the Texas State Line;

Bounded on the east by the Eastern Texas State Line.

Bounded on the south by the Southern Texas State Line.

Bounded on the west by the western Cameron, Hidalgo, Starr, Zapata, Duval, McMullen, Atascosa, Bexar, Comal, Blanco, Burnet and Lampasas County Lines.

Excludes export port locations serviced by GIPSA's League City Field Office, Beaumont Sub-office, and Corpus Christi Duty Point.

**Opportunity for Designation**

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas is for a period of no more than three years and will be concurrent with any existing designation. To apply for designation or for more information, contact Dexter Thomas at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

**Request for Comments**

In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Dexter Thomas at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicant will be designated.

**Authority:** 7 U.S.C. 71–87k.

**Larry Mitchell,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2014–05994 Filed 3–18–14; 8:45 am]

**BILLING CODE 3410–KD–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that orientation and planning meetings of the District of Columbia Advisory Committee to the Commission will convene at 12:00 p.m. (ET) on Friday, April 18, 2014, at 1331 Pennsylvania Avenue NW, Suite 1150, Washington, DC 20425. The purpose of the orientation meeting is to review the rules of operation for the Advisory Committee. The purpose of the planning meeting is for the newly appointed Advisory Committee to consider potential civil rights topics for examination and to plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, May, 19, 2014. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Melanie Reingardt at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated: March 14, 2014.

**David Mussatt,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2014–06056 Filed 3–18–14; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[03/06/2014 through 03/13/2014]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Ultimate Machining & Engineering, Inc. | 14015 S. Van Dyke Rd., Plainfield, IL 60544. | 3/7/2014 | The firm manufacturers' precision machined metal parts such as hydraulic and pneumatic valves. |
| Bigston Corporation | 1590 Touhy Avenue, Elk Grove Village, IL 60007. | 3/13/2014 | The firm manufacturers' electronic assemblies including speakers for the electronics device industry. |

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[03/06/2014 through 03/13/2014]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Atlas Machining & Welding, Inc. | 777 Smith Lane, Northampton, PA 18067. | 3/13/2014 | The firm manufacturers' large custom iron and steel parts and assemblies. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: March 13, 2014.

**Michael DeVillo,**

*Eligibility Examiner.*

[FR Doc. 2014–06014 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802]**

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam; Final Results of Re-Conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. and Intent Not To Revoke; 2008–2009

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 18, 2013, the Department of Commerce (''the Department'') published its *Preliminary Results* of the re-conducted administrative review of certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (''Grobest'') and intent not to revoke.[1] The period of review (''POR'') is February 1, 2008, through January 31, 2009. The final dumping margin is listed below in the ''Final Results of the Review'' section of this notice.

**DATES:** *Effective Date:* March 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 18, 2013, the Department published the *Preliminary Results* of this administrative review.[2] On November 4, 2013, we received a case brief from Grobest.[3] On November 12, 2013, we received a rebuttal brief from Domestic Producers.[4]

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[5] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. Further, on January 28, 2014, the Department extended the deadline in this proceeding by 60 days.[6] The revised deadline for these final results is April 4, 2014.

#### Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in the Issues and Decision Memorandum, dated concurrently with these results and hereby adopted by this notice, remains dispositive.[7]

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the Issues and Decision Memorandum, which is hereby adopted by this Notice. A list of the issues which parties raised is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU. In addition, a complete version of the

[1] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Re-conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. and Intent Not To Revoke; 2008–2009,* 78 FR 57532 (September 18, 2013) (''*Preliminary Results*'').

[2] *See id.*

[3] *See* Letter from Grobest, to the Department, regarding ''Certain Frozen Warmwater Shrimp from Vietnam: Case Brief on behalf of Viet I-Mei Frozen Foods Co, Ltd.,'' dated November 4, 2013.

[4] *See* Letter from Domestic Producers, to Commerce, regarding ''Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008–2009) for Grobest & I-Mei Industrial (Vietnam) Co., Ltd.: Rebuttal Brief,'' dated November 12, 2013.

[5] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[6] *See* Memorandum to Christian Marsh, through James Doyle, from Susan Pulongbarit, ''Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Re-conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd., dated January 27, 2014.

[7] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for antidumping and Countervailing Duty Operations, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Re-Conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd., dated concurrently with these results.

Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have not made any changes to the *Preliminary Results.*

**Determination Not To Revoke Order in Part**

We continue to find that Grobest has not satisfied the requirements of 19 CFR 351.222(b). Thus, under section 751 of the Tariff Act of 1930, as amended (''the Act''), we determine not to revoke in part the order with respect to Grobest.

**Final Results of the Review**

The dumping margin for the POR is as follows:

| Exporter | Weighted-average margin (Percent) |
|---|---|
| Grobest & I-Mei Industrial (Vietnam) | 25.76 |

**Assessment Rates**

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales.[8] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department announced a refinement to its assessment practice in non-market economy (''NME'') cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate. For a full discussion of this practice, *see NME Antidumping Proceedings.*[9]

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 13, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–06080 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–DS–P**

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*NME Antidumping Proceedings*'').

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–802]**

### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Reopening of the First Five-Year ''Sunset'' Review of the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 7, 2010, the Department of Commerce (''the Department'') published the final results of the first sunset review of the antidumping duty (''AD'') order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''). Certain information has come to the Department's attention that may call into question the integrity of the first sunset review and the information on which the Department relied for its final results. The Department is reopening the first sunset review to consider the new information and invites the interested parties to comment on this information.

**DATES:** *Effective Date:* March 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: 202–482–4047.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 7, 2010, the Department published the final results of the first sunset review of the AD order on certain frozen warmwater shrimp from Vietnam finding that revocation of the order would likely lead to continuation or recurrence of dumping.[1] On April 5, 2011, the International Trade Commission (''the ITC'') published its determination pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'') that revocation of

[1] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Five-year ''Sunset'' Review of the Antidumping Duty Order,* 75 FR 75965 (December 7, 2010)(''*Sunset Final Results*'').

the AD orders from Brazil, India, the People's Republic of China (''PRC''), Thailand and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] On April 29, 2011, the Department published the notice of continuation of these AD orders.[3]

Subsequent to the publication of the *Final Results,* in a separate proceeding concerning the AD order on certain frozen warmwater shrimp from the PRC, Petitioners submitted to the Department certain information released in conjunction with a federal criminal proceeding before the United States District Court for the Central District of California.[4] This information may be relevant to the AD order on shrimp from Vietnam. In particular, the information, which relates to the time period considered in the sunset review, indicates that Vietnamese exporters of shrimp may have engaged in a scheme to falsely label seafood and evade payment of ADs.[5] The Sentencing Report states, among other things, that the ''scheme was undertaken to . . . escape anti-dumping duties and/or scrutiny of possible circumvention of anti-dumping duties. . . .''[6]

According to the Sentencing Report, a U.S. importer, Ocean Duke,[7] imported shrimp from countries subject to an AD order, ''particularly from Vietnam'' and ''labeled it, falsely, as product of Cambodia (thus, not subject to anti-dumping duties.).''[8] Moreover, the Sentencing Report indicates that subsequent to the imposition of ADs on shrimp from Vietnam in 2004,[9] ''between May 2004 and July 2005 Ocean Duke imported as product of Cambodia over 15 million pounds of aquacultured, or farmed shrimp, with a declared value of over $42 million.''[10] The Sentencing Report also states that ''during all of 2004 and 2005, Cambodia produced only an estimated 385,000 pounds of aquacultured shrimp.''[11] According to the Sentencing Report, internal emails and statements of former employees confirm the existence of significant shipments of ''Vietnamese shrimp through Cambodia, thus making possible the export of 15 million pounds,'' *i.e.,* many times greater than Cambodia's entire aquacultured shrimp production.[12]

The Sentencing Report indicates that ''U.S. Customs records establish that in 2002 and 2003, Ocean Duke imported shrimp from Vietnam, Thailand, China, and occasionally Indonesia; *but not Cambodia.''*[13] On January 27, 2004, the Department published in the **Federal Register** the notice of initiation of AD investigations on certain warmwater shrimp from various countries, including Vietnam.[14] These investigations did not involve Cambodian shrimp.[15]

Relying on U.S. Customs records, the Sentencing Report states that in May 2004, *i.e.,* within months from the initiation of the AD investigation on shrimp from Vietnam, Ocean Duke ceased importing shrimp from Vietnam and simultaneously began importing significant quantities of shrimp from Cambodia.[16] During the period from May through December 2003, *i.e.,* immediately prior to the initiation of the AD investigation on shrimp from Vietnam, Ocean Duke imported 52 shipments of shrimp from Vietnam and *none* from Cambodia.[17] In contrast, during the same period in 2004, *i.e.,* after the AD investigation was initiated, Ocean Duke imported no shrimp from Vietnam and 327 shipments of shrimp from Cambodia.[18] The email correspondence to the U.S. importer, dated May 13, 2004, states in part: ''We are shipping some containers of [shrimp] . . . . from VN to Cambodia for repacking. We really want to reuse all white cartons of Vietnam and stick MC [master carton] labels in Cambodia.''[19]

## Scope of the Order[20]

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[21] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught

[2] *See Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand and Vietnam,* 76 FR 18782 (April 5, 2011).

[3] *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand and Vietnam: Continuation of Antidumping Duty Orders,* 76 FR 23972 (April 29, 2011).

[4] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 77 FR 53856, 53857 (September 4, 2012) and the accompanying Issues and Decisions Memorandum at Company Specific Issues (Hilltop) and Comments 1–2; *see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Reconsideration of a Changed Circumstances Review,* 78 FR 76106 (December 16, 2013) and the accompanying Issues and Decisions Memorandum at Comment 1. Petitioners also referenced this information in a submission made in an administrative review of this Vietnam shrimp proceeding, but did not place it on the administrative record of that segment. *See* Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam; Final Results of Re-conducted Administrative Review of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. and Intent Not to Revoke; 2008—2009, signed March 13, 2014, publication pending.

[5] *See* United States' Position with Respect to Sentencing, at 2, 5 (February 6, 2012) (''Sentencing Report'').

[6] According to the Sentencing Report, the scheme involving Vietnamese shrimp was originally uncovered when the NOAA Office of Enforcement and Immigration and Customs Enforcement (''ICE'') investigated several companies importing Vietnamese catfish, which was subject to a separate antidumping duty order, in boxes labeled as other species that were not subject to antidumping duties, such as ''sole,'' ''grouper,'' ''carp,'' ''channa,'' etc. *See* Sentencing Report at 19.

[7] Ocean Duke was found to be an affiliate of a Vietnamese exporter during the time period. *See e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10691–93 (March 9, 2007) (unchanged in final results, *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and New Shipper Review,* 72 FR 52052 (September 12, 2007)).

[8] *See* Sentencing Report at 5.

[9] The Department instructed U.S. Customs and Border Protection to begin collecting duties as of July 16, 2004, the date of publication of its affirmative preliminary determination of sales at less than fair value. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination; Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42686 (July 16, 2004).

[10] *See* Sentencing Report at 5.

[11] *Id.* at 5 and at Attachments 1–3 (documenting Cambodian shrimp production data).

[12] *Id.* at 5.

[13] *Id.* at 20 (emphasis in the original) and Attachments 7 and 8.

[14] *See Initiation of Antidumping Duty Investigations,* 69 FR 3876 (January 27, 2004) (''*Notice of Initiation''*).

[15] *Id.*

[16] *See* Sentencing Report at 20 and Attachment 10.

[17] *Id.* at 20–21 and Attachments 9 and 10.

[18] *Id.*

[19] *Id.* at Attachment 14.

[20] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23227 (April 26, 2011). Because dusted shrimp were excluded from the scope of the order during the sunset review period, dusted shrimp continue to be excluded for purposes of this re-opened sunset review.

[21] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

## Analysis

The Department determines that the information contained in the Sentencing Report warrants a reopening of the first sunset review of the AD order on certain frozen warmwater shrimp from Vietnam. In accordance with requirements of the Act, in the sunset review, the Department examined whether revocation of the AD order would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the AD order. The information contained in the Sentencing Report was not available to the Department at the time of the sunset review, and thus was not considered by the Department in its likelihood determination.

The information in the Sentencing Report suggesting the existence of a multi-year transnational scheme to avoid payment of ADs on Vietnamese shrimp is potentially relevant to the issues considered in the sunset review, including whether dumping is likely to continue or recur if the AD order is revoked. We are concerned that the record examined in the sunset review may have been tainted by fraud, which may have affected the completeness, accuracy and reliability of the information considered by the Department. For example, a significant portion of Vietnamese shrimp exporters to the United States (collectively referred to as Vietnamese Shrimp Exporters)[22] actively participated in the sunset review, making joint submissions, in which they argued in part that certain import volume declines occurred because of supply and demand issues.[23] In making its joint submissions to the Department (and certifying to their accuracy), however, the Vietnamese Shrimp Exporters (which included the affiliate of Ocean Duke) did not present information to the Department related to the findings in the Sentencing Report regarding the alleged scheme for avoiding the payment of ADs by means of exporting Vietnamese shrimp as the product of Cambodia.

The Court of Appeals for the Federal Circuit recognized the Department's authority to ensure that our proceedings are not undermined by fraud, holding that the Department has the ''inherent authority'' to reopen and reconsider a previously conducted proceeding, when new evidence of fraud calls into question the integrity of the determination.[24] Here, the information stemming from a separate criminal proceeding raised serious questions regarding the integrity, accuracy and completeness of the administrative record considered in the sunset review of the AD order on shrimp from Vietnam. Accordingly, we determine that the reopening of the first sunset review to consider this information and its impact on the sunset review is warranted under these circumstances.

## Comments

Concurrently with the publication of this notice, the Department intends to place the new information discussed above on the record of this sunset review. The Department invites all interested parties to comment on the new information. Interested parties may submit comments no later than 30 days from the publication of this notice. Comments must be limited to the new information and how the Department should consider it in its analysis.

## Filing Information

All submissions in this reopened segment must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements

[22] The Department received substantive responses to its notice of initiation of the sunset review from Vietnamese Shrimp Exporters and domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). 19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided an adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation of the sunset review. On March 2, 2010, the Department determined that the Vietnamese Shrimp Exporters submitted an adequate substantive response to the Department's notice of initiation. *See* Memorandum to James C. Doyle: Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated March 2, 2010.

[23] *See Sunset Final Results,* and accompanying Issues and Decision Memorandum at Issue 1.

[24] *See Tokyo Kikai Seisakusho, Ltd.* v. *United States,* 529 F.3d 1352, 1360–62 (Fed. Cir. 2008).

via Enforcement and Compliance's AD and Countervailing Duty (''CVD'') Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303.[25]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[26]

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for this sunset review. Because changes to the representation of interested parties may have changed since this sunset review was initially conducted, to facilitate the timely update of the service list, it is requested that those seeking recognition as interested parties to this reopened segment file an entry of appearance within 10 days of the publication of this notice.

We urge interested parties to apply for access to proprietary information under APO immediately following publication of this notice in the **Federal Register**. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752(c), and 777(i) of the Act.

Dated: March 14, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–06081 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–DS–P**

[25] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[26] *See* section 782(b) of the Act.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–936]**

### Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 2, 2013, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on circular welded carbon quality steel line pipe (''line pipe'') from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B) and (C). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the ''Final Results of Review'' section of this notice.

**DATES:** *Effective Date:* March 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 2, 2013, the Department initiated a sunset review of the CVD order on line pipe from the PRC pursuant to section 751(c) of the Act.[1] The Department received a notice of intent to participate in the review on behalf of United States Steel Corporation (''US Steel''), Maverick Tube Corporation (''Maverick''), American Cast Iron Pipe Company (''ACIPCO''), JMC Steel Group, Stupp Corporation, Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA, (collectively, ''the domestic industry'') within the deadline specified in 19 CFR 351.218(d)(1)(i). Each of these companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of the domestic like product.

The Department received adequate substantive responses collectively from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any government or respondent interested party to the proceeding. Because the Department received no response from the respondent interested parties, the Department conducted an expedited review of this CVD order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

[1] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 72061 (December 2, 2013).

#### Scope of the Order

The merchandise covered by this order is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe).

The welded line pipe products that are the subject of this order are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

For a full description of the scope, *see* ''Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Countervailing Duty Order on Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China'' 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 final notice, and hereby adopted by this notice (''Issues and Decision Memorandum'').

#### Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy and the net countervailable subsidy likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this expedited sunset review and the corresponding recommendations in this public memorandum which is on file electronically via the Enforcement and Compliance Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Final Results of Review**

We determine that revocation of the CVD order on line pipe from the PRC would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

| Producers/exporters | Net countervailable subsidy (percent) |
|---|---|
| Huludao Companies | 33.43 |
| Liaoning Northern Steel Pipe Co., Ltd. | 40.05 |
| All Others Rate | 36.74 |

**Notification Regarding Administrative Protective Order**

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

| Exporter | Weighted-average margin (Percent) |
|---|---|
| Grobest & I-Mei Industrial (Vietnam) | 25.76 |

Dated: March 11, 2014.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2014–05972 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 14–00001]**

### Export Trade Certificate of Review

**ACTION:** Notice of Application for an Export Trade Certificate of Review for Willians Global Trade Concierge, LLC Application no. 14–00001.

**SUMMARY:** The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 14–00001.''

A summary of the current application follows.

**Summary of the Application**

Applicant: Willians Global Trade Concierge, LLC, 5051 Brown Street, Philadelphia, PA 19139.

Contact: Janean Campbell, Owner.

Application No.: 14–00001.

Date Deemed Submitted: February 27, 2014.

Summary: Willians Global Trade Concierge, LLC (''WGTC'') seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

**Export Trade**

*Products:* All Products.

*Services:* All services related to the export of Products.

*Technology Rights:* All intellectual property rights associated with Products or Services, including, but not limited to: patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

*Export Trade Facilitation Services (as They Relate to the Export of Products):* Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (e.g., Export Enhancement and Market Promotion programs, invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

**Export Trade Activities and Methods of Operations**

To engage in Export Trade in the Export Markets, WGTC may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products and Services, and/or Technology Rights to Export Markets;

4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products and Services and/or Technology Rights;

6. Allocate export orders among Suppliers;

7. Establish the price of Products and Services and/or Technology Rights for sales and/or licensing in Export Markets; and

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

9. WGTC may exchange information with individual Suppliers on a one-to-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by WGTC with its distributors in Export Markets.

**Definition**

''Supplier'' means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Dated: March 3, 2014.

**Joseph Flynn,**

*Director, Office of Trade and Economic Analysis, International Trade Administration.*

[FR Doc. 2014–05993 Filed 3–18–14; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD169**

### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting; Correction

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

**ACTION:** Meetings of the South Atlantic Fishery Management Council's Habitat & Environmental Protection Advisory Panel (AP); King & Spanish Mackerel AP; and Snapper Grouper AP; Correction.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will hold the AP meetings in North Charleston, SC.

**DATES:** The meetings will be held from 1 p.m. on Tuesday, April 1, 2014 until 12 noon on Friday, April 11, 2014.

**ADDRESSES:** *Meeting address:* The meetings will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; phone: (877) 227–6963 or (843) 744–4422; fax: (843) 744–4472.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** This notice was published in the **Federal Register** on March 14, 2014 (79 FR 14482). There is an agenda change under item 3 of the King and Spanish Mackerel AP Agenda.

The items of discussion in the individual meeting agendas are as follows:

**Habitat & Environmental Protection AP Agenda, 1 p.m. on Tuesday, April 1, 2014 until 1 p.m. on Thursday, April 3, 2014**

1. Update and develop Council Essential Fish Habitat (EFH) policy statements.

2. Receive updates on regional habitat and ecosystem characterization and modeling efforts.

3. Receive updates and provide input on regional ecosystem partner conservation efforts (e.g., South Atlantic Landscape Conservation Cooperative's Draft Conservation Blueprint).

4. Discuss development of the Council's Fishery Ecosystem Plan II, updates to EFH, and proposed new sections addressing forage fish/prey predator interactions, climate and fisheries and fishery oceanography.

5. Discuss updates to the Council's Fishery Ecosystem Plan.

6. Provide recommendations to the Council for consideration.

**King & Spanish Mackerel AP Agenda, 1 p.m. on Monday, April 7, 2014 until 12 noon on Tuesday, April 8, 2014**

1. Approve minutes from the April 2013 Mackerel AP Meeting.

2. Receive an update on the progress of Southeast Data, Assessment & Review (SEDAR) 38 (Gulf and South Atlantic King Mackerel). Discuss project and provide recommendations.

3. Receive an overview of the following amendments: Coastal Migratory Pelagics (CMP) Joint Amendment 24 (allocations); CMP Joint Amendment 26 (separate commercial permits) and CMP Framework Amendment 2 (Spanish Mackerel commercial trip limits). Discuss amendments and provide recommendations.

**Snapper Grouper AP Agenda, 1:30 p.m. on Tuesday, April 8, 2014 until 12 noon on Friday, April 11, 2014**

1. Review and provide recommendations on the following amendments: Regulatory Amendment 16 (removal of the Black Sea Bass pot closure); Amendment 22 (tags to track harvest); Amendment 29 (Only Reliable Catch Stocks, ORCS, and Gray Triggerfish management measures); Amendment 32 (Blueline Tilefish Annual Catch Limits, ACLs, and management measures); Regulatory Amendment 20 (Snowy Grouper); Dolphin Wahoo Amendment 7/Snapper Grouper Amendment 33 (transport of fillets); Regulatory Amendment 17 (Marine Protected Areas, MPAs); and the Generic Accountability Measures/Dolphin Allocation Amendment.

2. Receive presentations on MPAs and provide recommendations to the Council.

3. Receive a report on the Oculina Experimental Closed Area Evaluation.

4. Receive an update on Visioning activities.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under

section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: March 14, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–06040 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XD171**

### Pacific Fishery Management Council; Public Meetings; Correction

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

**ACTION:** Correction to a notice of public meetings.

**SUMMARY:** The Council and its advisory entities will hold public meetings. This notice corrects the list of items to be considered by the Council and its advisory bodies.

**DATES:** The Council and its advisory entities will meet April 3–10, 2014. The Council meeting will begin on Saturday, April 5, 2014 at 8 a.m., reconvening each day through Thursday, April 10, 2014. All meetings are open to the public, except a closed session will be held at the end of the day's agenda on Monday, April 7 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** Meetings of the Council and its advisory entities will be held at the Hilton Vancouver Washington, 301 W. 6th Street, Vancouver, WA 98660; telephone: (360) 993–4500.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

**SUPPLEMENTARY INFORMATION:** This notice was published in the **Federal Register** on March 14, 2014 (79 FR 14481). Due to some agenda changes, it is being re-published in its entirety.

The April 5–10, 2014 meeting of the Pacific Fishery Management Council will be streamed live on the Internet. The live meeting will be broadcast daily starting at 8 a.m. Pacific Time (PT) beginning on Saturday, April 5, 2014 through Thursday, April 10, 2014. The broadcast will end daily at 6 p.m. PT *or when business for the day is complete.* Only the audio portion, and portions of the presentations displayed on the screen at the Council meeting, will be broadcast. The audio portion is listen-only; you will be unable to speak to the Council via the broadcast. Join the meeting by visiting this link *http://www.joinwebinar.com*, enter the Webinar ID for this meeting, which is 548–710–791 and enter your email address as required. It is recommended that you use a computer headset as GoToMeeting allows you to listen to the meeting using your computer headset and speakers. If you do not have a headset and speakers, you may use your telephone for the audio portion of the meeting by dialing this TOLL number 1–914–339–0030 (not a toll free number); entering the phone audio access code 232–435–071; and then entering your Audio Pin which will be shown to you after joining the webinar. The webinar is broadcast in listen only mode.

The following items are on the Pacific Council agenda, but not necessarily in this order.

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Open Comment Period
  Comments on Non-Agenda Items
C. Administrative Matters
  1. Approval of Council Meeting Minutes
  2. Membership Appointments and Council Operating Procedures
  3. Future Council Meeting Agenda and Workload Planning
D. Habitat
  Current Habitat Issues
E. Enforcement Issues
  Annual U.S. Coast Guard Fishery Enforcement Report
F. Salmon Management
  1. Tentative Adoption of 2014 Salmon Management Measures for Analysis
  2. Clarify Council Direction on 2014 Salmon Management Measures
  3. Methodology Review Preliminary Topic Selection
  4. Lower Columbia Natural Coho Harvest Rate Matrix Review
  5. Final Action on 2014 Salmon Management Measures
G. Pacific Halibut Management
  Final Incidental Landing Restrictions for 2014–15 Salmon Troll Fishery
H. Groundfish Management
  1. Electronic Monitoring Program Informational Briefing
  2. Fisheries in 2015–16 and Beyond: Updates and Key Decision Points Informational Briefing
  3. National Marine Fisheries Service Report
  4. Fisheries in 2015–16 and Beyond: Adopt Biennial Specifications Final Preferred Alternatives
  5. Fisheries in 2015–16 and Beyond: Stock Complex Restructuring
  6. Implement 2014 Pacific Whiting Fishery under the U.S.-Canada Whiting Agreement
  7. Sablefish Catch Share Program Review Phase 1
  8. Electronic Monitoring Program Development Including Preliminary Approval of Exempted Fishing Permits
  9. Fisheries in 2015–16 and Beyond: Adopt Management Measures Preliminary Preferred Alternatives
I. Coastal Pelagic Species Management
  Sardine Assessment, Specifications, and Management Measures
J. Ecosystem Management
  Protecting Unfished and Unmanaged Forage Fish Species Initiative

**Schedule of Ancillary Meetings**

*Day 1—Thursday, April 3, 2014*

Groundfish Management Team—1 p.m.
Lower Columbia Natural Coho Workgroup—1 p.m.

*Day 2—Friday, April 4, 2014*

Scientific and Statistical Committee Groundfish Subcommittee—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Habitat Committee—8:30 a.m.
Model Evaluation Workgroup—11 a.m.
Budget Committee—2:30 p.m.

*Day 3—Saturday, April 5, 2014*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.

Scientific and Statistical Committee—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—3 p.m.
Chair's Reception—6 p.m.

*Day 4—Sunday, April 6, 2014*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Groundfish Management Team—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed

*Day 5—Monday, April 7, 2014*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Coastal Pelagic Species Advisory Subpanel—8 a.m.
Coastal Pelagic Species Management Team—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed

*Day 6—Tuesday, April 8, 2014*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Coastal Pelagic Species Advisory Subpanel—8 a.m.
Coastal Pelagic Species Management Team—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Ecosystem Advisory Subpanel—1 p.m.
Enforcement Consultants—As Needed

*Day 7—Wednesday, April 9, 2014*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Ecosystem Advisory Subpanel—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Salmon Technical Team—8 a.m.
Enforcement Consultants—As Needed

*Day 8—Thursday, April 10, 2014*

California State Delegation—7 a.m.
Oregon State Delegation—7 a.m.
Washington State Delegation—7 a.m.
Ecosystem Advisory Subpanel—8 a.m.

Additional detail on agenda items, Council action, and meeting rooms, is described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance April 2014 briefing materials and posted on the Council Web site (*www.pcouncil.org*).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 14, 2014.

**Tracey L. Thompson,**

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

[FR Doc. 2014–06039 Filed 3–18–14; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Global Intellectual Property Academy (GIPA) Surveys

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this extension of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 19, 2014.

**ADDRESSES:** You may submit comments by any of the following methods:

- Email: *InformationCollection@uspto.gov.* Include ''0651–0065 comment'' in the subject line of the message.
- Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- Federal Rulemaking Portal: *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of J. David Binsted, Program Manager, Global Intellectual Property Academy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–1500; or by email at *james.binsted@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The United States Patent and Trademark Office (USPTO) surveys international and domestic participants of the USPTO's Global Intellectual Property Academy (GIPA) training programs to obtain feedback from the participants on the effectiveness of the various services provided to them in the training programs. GIPA was established in 2006 to offer training programs on enforcement of intellectual property rights, patents, trademarks, and copyrights. The training programs offered by GIPA are designed to meet the specific needs of foreign government officials (including judges, prosecutors, police, customs officials, patent, trademark, and copyright officials, and policy makers) concerning various intellectual property topics, such as global intellectual property rights protection and enforcement and strategies to handle the protection and enforcement issues in their respective countries.

This collection contains three surveys: Pre-program, post-program, and alumni. The pre-program survey is designed to obtain the background and experience of a participant and is delivered to the participant prior to their arrival for a GIPA training program. The post-program survey is used to analyze the overall effectiveness of the program and is conducted at the conclusion of the training program. The alumni survey is used to determine the value of the GIPA training program on the future job performance of the participant. The data obtained from these participation satisfaction surveys will be used to evaluate the percentage of foreign officials trained by GIPA who have initiated or implemented a positive intellectual property change in their organization; the percentage of foreign officials trained by GIPA who increased their expertise in intellectual property; the satisfaction with the intellectual property program, and the value of the experience as it relates to future job performance. The data received from these surveys will also be used to help the USPTO meet organizational

performance and accountability goals through the following legislative mandates: Government Performance and Results Act of 1993 (GPRA), the President's Management Agenda (PMA), and the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART). These surveys also support various business goals developed by the USPTO to fulfill customer service and performance goals, to assist the USPTO in strategic planning for future initiatives, to verify existing service standards, and to establish new ones.

The GIPA surveys are voluntary surveys. The USPTO expects to hire a survey contractor to conduct these surveys. The surveys will primarily be conducted electronically, but the USPTO will also have paper surveys to mail to those participants who have poor Internet connectivity or have access restrictions. In-person surveys may also be conducted. Survey participants will be able to access the online surveys through links provided to them in email invitations. The links provided in these emails are individualized links that are uniquely tied to the survey participants so passwords, user ids, or usernames are not needed to access the surveys.

Information collected from the surveys will be kept private, to the extent provided by law. Responses to the pre-program, post-program, and alumni surveys can be linked to the participants and to the demographic data collected from them during the various GIPA training programs. However, the actual data recorded from the surveys will not be directly linked to the participants. Any data linking the individual to their responses will not be retained after the data has been aggregated. The USPTO will have limited access to the data. The only data that the USPTO can access will be the aggregated survey data and the frequency of the responses; the agency will not be able to view the individual responses or the data related to the survey. The survey contractor will have access to individual survey responses for analysis purposes only and will only report the aggregated data and the frequency of the responses. The USPTO does not intend to collect any personal identifying data from the participants and intends to maintain the contact information for the participants in a separate file from the quantitative data.

## II. Method of Collection

The surveys will primarily be online surveys but the USPTO will also have paper surveys to mail to those participants who have poor Internet connectivity or have access restrictions. The surveys will also be distributed by email. In-person surveys may also be conducted.

## III. Data

*OMB Number:* 0651–0065.

*Form Number(s):* None.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and businesses or other for profit institutions.

*Estimated Number of Respondents:* 650 responses per year. The USPTO estimates that approximately 350 of the surveys will be filed electronically.

*Estimated Time per Response:* The USPTO estimates that it takes the public approximately 15 minutes (0.25 hours) to complete the surveys in this collection. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to complete and submit the surveys, whether the participant completes the survey in paper or electronically.

*Estimated Total Annual Respondent Burden Hours:* 163 hours per year.

*Estimated Total Annual Respondent Cost Burden:* $28,688 per year. The USPTO expects that the audience for the GIPA training programs will typically consist of high-ranking government officials, judges, lawyers, examiners, and others. The USPTO estimates that roughly 20% of the attendees fall into the high-ranking categories, while the rest make up 80% of the attendees. The USPTO estimates that the hourly rate for 20% of the attendees would be roughly equivalent to the professional hourly rate of $389, while the rest would be roughly equivalent to the para-professional hourly rate of $122. Using these U.S. hourly rates, the USPTO estimates a professional hourly rate of $78 and a paraprofessional hourly rate of $98, for a total hourly rate of $176. Please note that since individuals with varying job titles and pay grades typically attend the GIPA training programs, the USPTO is currently unable to derive a concise international labor rate for these individuals. Due to this and the fact that the training is conducted in the United States, the USPTO is using the corresponding United States pay rates to calculate the hourly labor rates. If the agency can obtain more concise hourly labor rate data for these individuals, these rates will be used to calculate the respondent burden in the future. The USPTO estimates that the total respondent cost burden for this collection is $28,688 per year.

| Item | Estimated time for response (minutes) | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Pre-Program Survey | 15 | 100 | 25 |
| Electronic Pre-Program Survey | 15 | 100 | 25 |
| Post-Program Survey | 15 | 100 | 25 |
| Electronic Post-Program Survey | 15 | 100 | 25 |
| Alumni Survey | 15 | 100 | 25 |
| Electronic Alumni Survey | 15 | 150 | 38 |
| Total | | 650 | 163 |

*Estimated Total Annual Non-hour Respondent Cost Burden:* $0 per year. There are no maintenance, operation, capital start-up, or recordkeeping costs associated with this information collection. These surveys do not have filing or other fees associated with them. The USPTO expects to conduct these surveys electronically using a survey tool and may also conduct in-person surveys. In either case, there will be no postage costs associated with these surveys.

## IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) 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; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 14, 2014.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2014–06002 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

**[Docket No. PTO–C–2014–0017]**

### National Medal of Technology and Innovation Nomination Evaluation Committee Charter Renewal

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Chief Financial Officer and Assistant Secretary of Commerce for Administration, with the concurrence of the General Services Administration, renewed the Charter for the National Medal of Technology and Innovation Nomination Evaluation Committee on February 28, 2014.

**DATES:** The Charter for the National Medal of Technology and Innovation Nomination Evaluation Committee was renewed on February 28, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9821 or by electronic mail at *nmti@uspto.gov*. Information is also available at *http://www.uspto.gov/about/nmti/index.jsp.*

**SUPPLEMENTARY INFORMATION:** The Chief Financial Officer and Assistant Secretary of Commerce for Administration, with the concurrence of the General Services Administration, renewed the Charter for the National Medal of Technology and Innovation Nomination Evaluation Committee (NMTI Committee) on February 28, 2014. The NMTI Committee was established in accordance with the Federal Advisory Committee Act and provides advice to the Secretary of Commerce regarding recommendations of nominees for the National Medal of Technology and Innovation (Medal). The duties of the NMTI Committee are solely advisory in nature. Nominations for this Medal are solicited through an open, competitive, and nationwide call for nominations, and the NMTI Committee members are responsible for reviewing the nominations received. The NMTI Committee members are distinguished experts in the private and public sectors with experience in, or an understanding of, the promotion of technology, technological innovation, and/or the development of technological manpower. The NMTI Committee evaluates the nominees and forwards its recommendations, through the Under Secretary of Commerce for Intellectual Property, to the Secretary of Commerce who, in turn, forwards her recommendations for the Medal to the President.

Dated: March 12, 2014.

**Michelle K. Lee,**

*Deputy Undersecretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 2014–06015 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

**[Docket No. PTO–P–2014–0013]**

### Request for Comments and Notice of Roundtable Event on the Use of Crowdsourcing and Third-Party Preissuance Submissions To Identify Relevant Prior Art

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The United States Patent and Trademark Office (Office) is hosting a roundtable event to solicit public opinions regarding the use of crowdsourcing and third-party preissuance submissions to identify relevant prior art and enhance the quality of examination as well as the quality of issued patents. Members of the public are invited to participate. The roundtable will provide a forum for an informal discussion of the topics identified in this notice. Written comments in response to these topics also are requested.

**DATES:** *Event:* The roundtable event will be held on April 10, 2014, beginning at 12:30 p.m. Eastern Daylight Time (EDT), and ending at 5:00 p.m. EDT.

*Registration:* Registration to attend the roundtable in person or via webcast is required by April 4, 2014. Additionally, members of the public who wish to participate in the roundtable as a speaker must do so by request in writing no later than March 27, 2014. See the ''Event Registration Information'' section of this notice for additional details on how to register.

*Comments:* Any member of the public, whether attending the roundtable or not, may submit written comments on any of the topics identified in part III of the **SUPPLEMENTARY INFORMATION** section, below, for consideration by the Office. Written comments must be received on or before April 25, 2014, to ensure consideration. Persons submitting written comments should note that the Office will not provide a response because this notice is not a notice of proposed rulemaking. Written comments should be sent by electronic mail addressed to *CrowdsourcingRoundtable2014@uspto.gov.* Comments also may be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Nicole Dretar Haines. Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail.

Comments will be available for public inspection via the Office's Internet Web site at *http://www.uspto.gov/patents/init_events/index.jsp,* and at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, VA 22314, upon request. Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**ADDRESSES:** The roundtable event will be held at the Office, Madison Auditorium South, Concourse Level, Madison Building, 600 Dulany Street, Alexandria, VA 22314.

*Event Registration Information:* Registration is required by April 4, 2014, to attend the roundtable in person or via Webcast. Additionally, members of the public who wish to participate in the roundtable as a speaker must do so by request in writing no later than March 27, 2014.

To register or request to present as a speaker, please send an email message to *CrowdsourcingRoundtable2014@uspto.gov* and provide the following information: (1) Your name, title, and if applicable, company or organization, address, phone number, and email address; (2) whether you wish to attend in person or via webcast; and (3) if you wish to make an oral presentation at the roundtable, which of the topics identified in part III of the **SUPPLEMENTARY INFORMATION** section, below, will be addressed and the approximate desired length of your presentation. Each attendee, even if from the same organization, must register separately.

Due to time constraints, the Office may not be able to accommodate all persons who wish to make a presentation. However, the Office will attempt to accommodate as many persons who wish to make a presentation as possible within the time constraints. After reviewing the list of speakers and the information regarding the presentations provided in the registration, the Office will contact each speaker prior to the event with the amount of time available and the approximate time that the speaker's presentation is scheduled to begin. The amount of time available for each presentation may be limited to ensure that all persons selected to speak will have a meaningful chance to do so. Speakers who opt to employ slides as part of their presentation must send final electronic copies of the slides in Microsoft PowerPoint to *CrowdsourcingRoundtable2014@uspto.gov* by April 4, 2014, so that the slides can be displayed at the roundtable. Additionally, the Office will provide an opportunity for persons in the audience not previously selected as speakers to speak at the roundtable without a formal presentation.

The Office plans to make the roundtable event available via webcast. Webcast information will be available on the Office's Internet Web site before the roundtable event at *http://www.uspto.gov/patents/init_events/index.jsp.*

If special accommodations due to a disability are needed, please inform the contact person(s) identified below.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information regarding registration and speaker presentations should be directed to the attention of Jack Harvey, Director, Technology Center 2800, by telephone at 571–272–8004, or by email to *jack.harvey@uspto.gov.* Requests for additional information regarding the topics for written comments and discussion at the roundtable event should be directed to Nicole Dretar Haines, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571–272–7717, or by email to *nicole.haines@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

I. *Purpose of Notice:* This notice announces a roundtable event to solicit public input concerning the topics identified in part III, below, relating to the use of crowdsourcing and third-party preissuance submissions to identify relevant prior art and enhance the quality of examination as well as the quality of issued patents. Specifically, the Office is seeking comments on the potential uses of crowdsourcing during patent examination, as well as ways for increasing the quality and volume of third-party preissuance submissions. The public is invited to provide comments on these topics and to identify future topics for discussion.

II. *Background:* Over the past year, the Office has solicited ideas from the software community through the Software Partnership to enhance the quality of software-related patents. In response, the public has proposed crowdsourcing as a technique to expand the prior art available to examiners. Further, crowdsourcing prior art was identified as a means to strengthen patent quality in the executive actions announced by the White House on February 20, 2014. While crowdsourcing was suggested in the context of the Software Partnership, the Office is exploring strategies to use crowdsourcing to obtain relevant prior art and enhance the quality of examination across all technology areas. Information on the Software Partnership may be found at *http://www.uspto.gov/patents/init_events/software_partnership.jsp* and information on the White House executive actions is available at *http://www.uspto.gov/patents/init_events/executive_actions.jsp.*

Crowdsourcing has the potential to help examiners in certain technology areas, such as software, where information that resides within the technical community is often not readily available to examiners. Existing crowdsourcing Web sites have made use of third-party preissuance submissions to submit prior art to examiners. The preissuance submissions by third parties provision of the America Invents Act permits third parties to submit relevant prior art publications to patent examiners with a concise description of relevance. *See Changes To Implement the Preissuance Submissions by Third Parties Provision of the Leahy-Smith America Invents Act,* 77 FR 42150 (July 17, 2012). The Office is seeking ways to improve the quality and increase the volume of third-party submissions, and utilizing crowdsourcing may be one promising avenue for achieving these goals. Aside from increasing the quality and quantity of third-party submissions, the Office is exploring other ways that crowdsourcing may help examiners identify relevant prior art during examination and contribute to the quality of issued patents.

III. *Topics for Written Comments and Discussion at the Roundtable Event:* The Office seeks comments on the following topics regarding the current third-party submission process and ways the Office can use crowdsourcing to improve the quality of examination:

1. How can the Office leverage the collective knowledge available via crowdsourcing to provide an examiner with relevant prior art?

2. What suggestions do you have for the Office to encourage more third-party submissions from the scientific and technical community via crowdsourcing activities?

3. Aside from encouraging more third-party submissions, what are other ways the Office can leverage crowdsourcing to get relevant information from experts in the scientific and technical community to the examiner?

4. How can the Office encourage more third-party participation while ensuring that no protest or other form of pre-issuance opposition to the grant of a patent on an application is initiated after publication of the application?

5. What, if anything, is preventing you from submitting prior art as part of a third-party submission?

6. What other ideas do you have to ensure examiners have the most relevant prior art in front of them during examination?

The Office also seeks comments on any additional topics, not listed above, that might serve as a basis for future discussions regarding the current third-party submission process and ways the Office can use crowdsourcing to improve the quality of examination.

Dated: March 12, 2014.

**Michelle K. Lee,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 2014–05996 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

**[Docket No. PTO–C–2014–0016]**

### National Medal of Technology and Innovation Extension of Deadline for 2014 Nominations

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice and extension of deadline for nominations.

**SUMMARY:** The Department of Commerce (United States Patent and Trademark Office (USPTO)) is in the process of accepting nominations for the National Medal of Technology and Innovation (NMTI). Since establishment by Congress in the Stevenson-Wydler Technology Innovation Act of 1980, the President of the United States has awarded the annual National Medal of Technology and Innovation (initially known as the National Medal of Technology) to our nation's leading innovators. To ensure greater participation in the nomination process, the USPTO is extending the deadline for nominations from April 1, 2014 to June 2, 2014. If you know of a candidate who has made an outstanding contribution to the nation's economic, environmental, or social well-being through the promotion of technology, technological innovation, or the development of technological manpower, you are encouraged to submit a nomination.

**ADDRESSES:** Nominations should be made by completing the NMTI nomination form available at *http://www.uspto.gov/about/nmti/index.jsp.* Nomination forms should be submitted to John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, by electronic mail to *NMTI@uspto.gov* or by postal mail to: John Palafoutas, NMTI Program Manager, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

**DATES:** The deadline for submission of a nomination is June 2, 2014.

**FOR FURTHER INFORMATION CONTACT:** John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9821 or by electronic mail to *nmti@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

As provided by Congress in the Stevenson-Wydler Technology Innovation Act of 1980, the National Medal of Technology was first awarded in 1985. On August 9, 2007, the President signed the America COMPETES (Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science) Act of 2007. The Act amended Section 16 of the Stevenson-Wydler Technology Innovation Act of 1980, changing the name of the Medal to the ''National Medal of Technology and Innovation.'' The NMTI is the highest honor awarded by the President of the United States to America's leading innovators in the field of technology and is given annually to individuals, teams, or companies/non-profits who have made outstanding contributions to the promotion of technology or technological innovation, or to the development of technological manpower for the improvement of the economic, environmental, or social well-being of the United States. The primary purpose of the NMTI is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market or in developing of the nation's technological manpower has had a profound and significant impact on our economy and way of life. The NMTI highlights the national importance of fostering technological innovation based upon solid science, resulting in commercially successful products and services. In order to ensure greater participation in the nomination process, the USPTO is extending the deadline for submitting a nomination from April 1, 2014 to June 2, 2014.

#### Eligibility and Nomination Criteria

Nomination Guidelines containing information on eligibility and nomination criteria are available at *http://www.uspto.gov/about/nmti/guidelines.jsp.*

Date: March 12, 2014.

**Michelle K. Lee,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 2014–06008 Filed 3–18–14; 8:45 am]

**BILLING CODE 3510–16–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Threat Reduction Advisory Committee; Notice of Federal Advisory Committee Meeting

**AGENCY:** Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense.

**ACTION:** Federal Advisory Committee meeting notice.

**SUMMARY:** The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (TRAC). This meeting will be closed to the public.

**DATES:** Wednesday, April 2, 2014, from 8:30 a.m. to 3:30 p.m. and Thursday, April 3, 2014, from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The Pentagon Conference Center, Arlington, Virginia on April 2 and CENTRA Technology Inc., Ballston, Virginia on April 3.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J2/5/8R–AC, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

**SUPPLEMENTARY INFORMATION:** Due to difficulties finalizing the meeting agenda for the scheduled meeting of April 2–3, 2014, of the Threat Reduction Advisory Committee the requirements of 41 CFR § 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR § 102–3.150(b), waives the 15-calendar day notification requirement.

*Purpose of Meeting:* This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Committee will obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, Combating Weapons of Mass Destruction (C–WMD), counter terrorism and counter proliferation.

*Agenda:* On Wednesday, April 2, the TRAC will hold a joint session with the Department of State's International Security Advisory Board (ISAB) during which time the two committees will share information about their efforts in areas of shared responsibility. Acting Deputy Secretary of Defense Christine

Fox, Honorable Rose Gottemoeller, and Honorable Frank Kendall will provide opening remarks to the committee members. Following the opening remarks, the members will receive two classified briefings on the ISAB's work with U.S.-Russia relations and International Cyber Stability. The CIA and DIA will provide a classified briefing on U.S.-Russia relations during the lunch session. At the afternoon session, the members will receive two classified briefings on the TRAC's work with Nuclear Strategic Stability and the Future of the Cooperative Threat Reduction Program. The meeting will wrap up with a final discussion on the briefings of the day. The Committees will not deliberate nor develop advice and recommendations for either the Department of State or the Department of Defense. The TRAC members only will continue to meet on April 3, 2014. The TRAC will hold classified discussions to deliberate on their review of DoD's Global Combating WMD Awareness System (GCAS) program. The GCAS program is structured to support DoD in its roles to identify, reduce, and mitigate the threat of WMD development, proliferation, and use worldwide. The Committee will provide an assessment on the program's ability to meet that goal. This will be followed by classified deliberations on the future of the Cooperative Threat Reduction Program (CTR). The Committee was asked to provide recommendations for the Office of the Under Secretary of Defense (Policy) regarding the development of a strategy for articulating the DoD CTR story, how best to coordinate with Combatant Commands on the use of the CTR program, and a strategy to advocate for the program with key stakeholders. The session will conclude with a classified discussion on the way ahead.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting of the TRAC on April 2–3, 2014, shall be closed to the public. The Department of State will make its own closed meeting determination for the ISAB. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that the public interest requires all sessions of this meeting be closed to the public because the discussions and sharing of information will be concerned with classified information and matters covered by 5 U.S.C. 552b(c)(1). Such classified matters are inextricably intertwined with the unclassified material and cannot reasonably be segregated into separate discussions without disclosing secret material.

*Committee's Designated Federal Officer or Point of Contact:* Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J2/5/8R–AC, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of FACA, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer. The Designated Federal Officer's contact information is listed in the section immediately above or it can be obtained from the General Services Administration's FACA Database: *http://www.facadatabase.gov/committee/committee.aspx?cid=1663&aid=41.* Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: March 14, 2014.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2014–06018 Filed 3–18–14; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket No. DARS—2014—0022]**

### Defense Federal Acquisition Regulation Supplement; Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** DoD is publishing the annual list of product categories for which the Federal Prison Industries' share of the DoD Market is greater than five percent.

**DATES:** *Effective* April 5, 2014.

**FOR FURTHER INFORMATION CONTACT:** Director, Defense Procurement and Acquisition Policy (DPAP), Contract Policy and International Contracting (CPIC), Room 5E621, 3060 Defense Pentagon, Washington, DC 20301–3060, Attention: Ms. Sheila Harris, telephone 703–614–1333.

**SUPPLEMENTARY INFORMATION:**

**I. Background:**

On November 19, 2009, a final rule was published at 74 FR 59914 which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6, to implement Section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008, Public Law 110–181. Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602–70.

The Director, Defense Procurement and Acquisition Policy (DPAP) issued a memorandum dated February 24, 2014, that provided the current list of product categories for which FPI's share of the DOD market is greater than five percent based on Fiscal Year 2013 data from the Federal Procurement Data System. The product categories to be competed effective April 5, 2014 are as follows:

- 5335 (Metal Screening).
- 7110 (Office Furniture).
- 7125 (Cabinets, Lockers, Bins and Shelving).
- 7230 (Draperies, Awnings, and Shades).
- 7290 (Misc. Household and Commercial Furnishings and Appliances).
- 8405 (Outerwear, Men's).
- 8415 (Clothing, Special Purpose).
- 8420 (Underwear and Nightwear, Men's).
- 8465 (Individual Equipment).
- 9905 (Signs, Advertising Displays and Identification Plates).

The DPAP memorandum with the current list of product categories for which FPI has a significant market share is posted at *http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.*

The statute, as implemented also requires DoD to—

(1) Include FPI in the solicitation process for these items; a timely offer from FPI must be considered; and award

procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to be make acquisitions, in accordance with FAR Subpart 8.6., for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery: and

(3) Section 827 allows modification of the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2014–06034 Filed 3–18–14; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2014–ICCD–0003]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of Clinical Practice in Traditional Teacher Preparation Programs in Missouri

**AGENCY:** Institute of Education Sciences/ National Center for Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before April 18, 2014.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0003 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Ok-Choon Park, 202–208–3951.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Study of Clinical Practice in Traditional Teacher Preparation Programs in Missouri.

*OMB Control Number:* 1850–NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 2,800.

*Total Estimated Number of Annual Burden Hours:* 1,176.

*Abstract:* This study will collect information about the clinical practice (student teaching and field experience) components of traditional teacher preparation programs (TPPs). The study will use a survey of first-year public school teachers in Missouri to collect information about: (1) The characteristics of clinical practice in traditional TPPs completed by first-year teachers; and (2) how clinical practice in traditional TPPs varies among certification tracks completed by first-year teachers. The study will be implemented during the 2014–15 school year.

Dated: March 13, 2014.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–05957 Filed 3–18–14; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2014–ICCD–0045]**

### Agency Information Collection Activities; Comment Request; Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before May 19, 2014.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0045 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ,

Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

*OMB Control Number:* 1845–0059.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 8,700.

*Total Estimated Number of Annual Burden Hours:* 2,871.

*Abstract:* These forms serve as the means by which eligible borrowers in the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program apply for teacher loan forgiveness and request forbearance on their loans while performing qualifying teaching service. Borrowers apply for loan forgiveness after they have completed five years of qualifying teaching service at a low-income elementary school, secondary school, or educational service agency. The Teacher Loan Forgiveness Forbearance Request serves as the means by which a borrower who intends to apply for teacher loan forgiveness requests forbearance (permission to temporarily cease making payments) on the loans for which he or she is seeking forgiveness while performing the teaching service applicable that will qualify the borrower for loan forgiveness.

Dated: March 13, 2014.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–05958 Filed 3–18–14; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2013–ICCD–0121]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Highly Qualified Teachers Clearance

**AGENCY:** Office of Planning and Evaluation and Policy Development (OPEPD) Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before April 18, 2014.

**ADDRESSES:** Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0121 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Chester Scott, 202–453–6345.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Highly Qualified Teachers Clearance.

*OMB Control Number:* 1875–NEW.

*Type of Review:* A new information collection.

*Respondents/Affected Public:* State, Local, or Tribal Governments.

*Total Estimated Number of Annual Responses:* 17,053.

*Total Estimated Number of Annual Burden Hours:* 115,000.

*Abstract:* As set forth in Section 145(b) of H.J. Res. 117, the Fiscal Year 2013 Continuing Resolution (CR) Congress directed the U.S. Department of Education (ED) to submit a report to Congress on December 31, 2013, regarding the degree to which certain populations of students (students with disabilities, English language learners, rural students, and economically disadvantaged students) are taught by teachers participating in an alternative route to certification program. State educational agencies (SEAs) and local educational agencies (LEAs) have not been required to collect nor report this information. The requested data must be

reported from schools to LEAs to SEAs. ED respectfully seeks clearance to collect this information required to answer Congress's directive. It is anticipated that the collection is needed for one year only, hence, SEAs are not likely to alter their data collection and reporting systems to meet this data reporting requirement.

Dated: March 13, 2014.

**Tomakie Washington,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2014–05956 Filed 3–18–14; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Service Contract Inventory for Fiscal Year (FY) 2013

**AGENCY:** Office of the Chief Financial Officer, Department of Education.

**ACTION:** Notice of availability—FY 2013 Service Contract Inventory.

**SUMMARY:** Through this notice, the Secretary announces the availability of the Department of Education's service contract inventory on its Web site, at *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.*

A service contract inventory is a tool for assisting an agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

**FOR FURTHER INFORMATION CONTACT:** Pier Connors, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 by phone at 202–245–6919 or email at *Pier.Connors@ed.gov.*

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

**SUPPLEMENTARY INFORMATION:** Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) by December 31, 2013. In addition, section 743 requires these agencies, which include the Department of Education, to (1) make the inventory available to the public, and (2) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and email address of an agency point of contact.

Through this notice, the Department announces the availability of its inventory on the following Web site: *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* The point of contact for the inventory is provided under the **FOR FURTHER INFORMATION CONTACT** section in this notice.

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

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

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

**Program Authority:** Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117.

Dated: March 14, 2014.

**Thomas P. Skelly,**

*Director of Budget Service, delegated the authority to perform the functions and duties of the Chief Financial Officer.*

[FR Doc. 2014–06071 Filed 3–18–14; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Hydrogen and Fuel Cell Technical Advisory Committee (HTAC): Correction

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting: correction.

**SUMMARY:** The Department of Energy (DOE) published in the **Federal Register** on March 5, 2014, a notice of an open meeting for the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The notice is being corrected to change the address of the meeting.

**Correction**

In the **Federal Register** of March 5, 2014, in FR DOC. 2014–04834, on page 12501, please make the following corrections:

In the **ADDRESSES** heading, second column, first paragraph, first line, please remove, ''U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Room 6A–112 and in its place add ''The Radisson Hotel—Reagan National Airport, 2020 Jefferson-Davis Highway, Arlington, Virginia 22202''.

Issued in Washington, DC, on March 13, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–06043 Filed 3–18–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, April 9, 2014, 2 p.m.–4 p.m.

**ADDRESSES:** Cities of Gold Conference Center, NNMCAB Conference Room, 10–B Cities of Gold Road, Pojoaque, NM 87506.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Environmental Monitoring and Remediation Committee (EM&R):* The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

*Purpose of the Waste Management (WM) Committee:* The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda:

1. 2:00 p.m. Approval of Agenda
2. 2:03 p.m. Approval of Minutes from March 12, 2014
3. 2:07 p.m. Old Business
4. 2:20 p.m. New Business
5. 2:35 p.m. Update from Executive Committee—Carlos Valdez, Chair
6. 2:40 p.m. Update from DOE—Lee Bishop, Deputy Designated Federal Officer
7. 2:45 p.m. Presentation by Pete Maggiore, Department of Energy, LA Field Office
   - Proposed Clean-up Process Campaign Once the 3706 Campaign is Complete
8. 3:30 p.m. Public Comment Period
9. 3:45 p.m. Committee Break-out Session
10. 4:00 p.m. Adjourn

*Public Participation:* The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on March 13, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–06045 Filed 3–18–14; 8:45 am]

**BILLING CODE 6405–01–P**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, April 9, 2014, 6 p.m.

**ADDRESSES:** Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@emor.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of March 12, 2014 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/board-minutes.html.*

Issued at Washington, DC, on March 14, 2014.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2014–06046 Filed 3–18–14; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Proposed Subsequent Arrangement

**AGENCY:** Office of Nonproliferation and International Security, Department of Energy.

**ACTION:** Proposed subsequent arrangement.

**SUMMARY:** This notice is being issued under the authority of section 131a. of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation Between the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

**DATES:** This subsequent arrangement will take effect no sooner than April 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katie Strangis, Office of Nonproliferation and International Security, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8623 or email: *Katie.Strangis@nnsa.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This subsequent arrangement concerns the retransfer of 45,445 kg of U.S.-origin natural uranium dioxide (88.00% U), 40,000 kg of which is uranium, from Cameco Corporation (Cameco) in Port Hope, Ontario, Canada, to Korea Nuclear Fuel (KNF) in Taejon, South Korea. The material, which is currently located at Cameco, will be transferred to KNF to be fabricated into fuel pellets at their facility The material was originally obtained by Cameco from Power Resources Inc., Cameco Resources-Crowe Butte Operation, and White Mesa Mill pursuant to export license XSOU8798.

In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: February 21, 2014.

For the Department of Energy.

**Anne M. Harrington,**

*Deputy Administrator, Defense Nuclear Nonproliferation.*

[FR Doc. 2014–05959 Filed 3–18–14; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Revision of a Currently Approved Information Collection for the Weatherization Assistance Program Sub-programs

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on an extension of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Weatherization Assistance Program, OMB Control Number 1910–5157. The proposed collection will collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously. A sixty day Notice and Request for Comments was published on January 6, 2014 at 79 FR 649. No comments were received to that notice. Comments are invited on: (a) Whether the currently approved 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 pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this revision to an approved information collection must be received on or before April 18, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Email: *Christine.Platt@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Lauren Hall, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290, Phone: (202) 287–1870, Fax: (202) 287–1745, Email: *Lauren.Hall@ee.doe.gov.*

Additional information and reporting guidance concerning the Weatherization Assistance Program (WAP) is available for review at the following Web site: *http://www1.eere.energy.gov/wip/wap.html.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1910–5157; (2) *Information Collection Request Title:* ''Weatherization Assistance Program (WAP) Sub-Programs''; (3) *Type of Review:* Revision of a Currently Approved Information Collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (5) *Annual Estimated Number of Respondents:* 17; (6) *Annual Estimated Number of Total Responses:* 68; (7) *Annual Estimated Number of Burden Hours:* 816; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $32,640.00.

**Statutory Authority:** Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110–140 as amended (42 U.S.C. 17151 et seq.).

Issued in Washington, DC.

**Robert Adams,**

*WAP Program Manager, Office of Weatherization and Intergovernmental Programs, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 2014–05961 Filed 3–18–14; 8:45 am]

BILLING CODE 6450–01–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:* EC14–67–000.

*Applicants:* Sabine Cogen, LP.

*Description:* Application for Authorization for Disposition of

Jurisdictional Facilities and Request for Expedited Action of Sabine Cogen, LP.

*Filed Date:* 3/10/14.

*Accession Number:* 20140310–5273.

*Comments Due:* 5 p.m. ET 3/31/14.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER14–1136–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Errata to Resubmit Original Service Agreement No. 3741 to be effective 12/23/2013.

*Filed Date:* 3/10/14.

*Accession Number:* 20140310–5244.

*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–1176–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2655 Substitute Kansas Municipal Energy Agency NITSA NOA to be effective 1/1/2014.

*Filed Date:* 3/10/14.

*Accession Number:* 20140310–5216.

*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–1461–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Revisions to the OATT Att DD re Capacity Resource Incentives to be effective 5/10/2014.

*Filed Date:* 3/10/14.

*Accession Number:* 20140310–5257.

*Comments Due:* 5 p.m. ET 3/31/14.

*Docket Numbers:* ER14–1462–000.

*Applicants:* Ohio Power Company.

*Description:* Notice of Cancellation of Ohio Power Company First Revised Rate Schedule No. 18.

*Filed Date:* 3/11/14.

*Accession Number:* 20140311–5009.

*Comments Due:* 5 p.m. ET 4/1/14.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES14–21–001.

*Applicants:* AEP Appalachian Transmission Company, Inc, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, Inc., AEP Southwestern Transmission Company, I,AEP West Virginia Transmission Company, AEP Oklahoma Transmission Company, Inc.

*Description:* Amended and Restated Application of AEP Appalachian Transmission Company, Inc., et. al.

*Filed Date:* 3/11/14.

*Accession Number:* 20140311–5040.

*Comments Due:* 5 p.m. ET 4/1/14.

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 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 11, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–06037 Filed 3–18–14; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1651–002.

*Applicants:* Golden State Water Company.

*Description:* Supplement to June 27, 2013 Updated market power analysis of Golden State Water Company.

*Filed Date:* 1/27/14.

*Accession Number:* 20140127–5088.

*Comments Due:* 5 p.m. ET 3/24/14.

*Docket Numbers:* ER13–2490–004.

*Applicants:* Simon Solar Farm, LLC.

*Description:* Supplement to January 22, 2014 Notice of Non-Material Change in Status of Simon Solar Farm, LLC.

*Filed Date:* 3/11/14.

*Accession Number:* 20140311–5191.

*Comments Due:* 5 p.m. ET 4/1/14.

*Docket Numbers:* ER14–225–002.

*Applicants:* New Brunswick Energy Marketing Corporation.

*Description:* Supplement to February 14, 2014 Triennial Review Compliance Filing of New Brunswick Energy Marketing Corporation.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5194.

*Comments Due:* 5 p.m. ET 4/15/14.

*Docket Numbers:* ER14–350–002.

*Applicants:* NorthWestern Corporation.

*Description:* Correction to Order No. 764 Compliance Filing (Montana) to be effective 1/7/2014.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5056.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–591–002.

*Applicants:* Southwest Power Pool, Inc.

*Description:* 2635 Lincoln Electric System GIA—Amended Compliance Filing to be effective 11/26/2013.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5183.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1077–000.

*Applicants:* Victory Garden Phase IV, LLC.

*Description:* Supplement to January 17, 2014 Victory Garden Phase IV, LLC tariff filing.

*Filed Date:* 3/11/14.

*Accession Number:* 20140311–5192.

*Comments Due:* 5 p.m. ET 4/1/14.

*Docket Numbers:* ER14–1373–001.

*Applicants:* Energy Utility Group, LLC.

*Description:* Amended MBR Filing to be effective 3/31/2014.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5170.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1463–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* First Revised Service Agreement No. 3185; Queue No. W4–046 to be effective 2/12/2014.

*Filed Date:* 3/11/14.

*Accession Number:* 20140311–5174.

*Comments Due:* 5 p.m. ET 4/1/14.

*Docket Numbers:* ER14–1464–000.

*Applicants:* Duke Energy Carolinas, LLC.

*Description:* EUEMC NITSA Revisions SA OATT No. 366 to be effective 3/1/2014.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5017.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1465–000.

*Applicants:* Avenal Park LLC.

*Description:* Avenal Park Compliance Filing to be effective 5/10/2014.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5020.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1466–000.

*Applicants:* Sand Drag LLC.

*Description:* Sand Drag Compliance Filing to be effective 5/10/2014.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5021.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1467–000.

*Applicants:* Sun City Project LLC.

*Description:* Sun City Compliance Filing to be effective 5/10/2014.

*Filed Date:* 3/12/14.

*Accession Number:* 20140312–5022.

*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1468–000.

*Applicants:* KMC Thermo, LLC.
*Description:* Market-Based Rate Application to be effective 5/16/2014.
*Filed Date:* 3/12/14.
*Accession Number:* 20140312–5042.
*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1469–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Revisions to OA Sec 18.17 Permitting Sharing of Data with Gas Pipeline Operators to be effective 3/13/2014.
*Filed Date:* 3/12/14.
*Accession Number:* 20140312–5046.
*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1470–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* 2014–03–11_SA 2645 Ameren-White Oak Facilities Service Agreement to be effective 5/11/2014.
*Filed Date:* 3/12/14.
*Accession Number:* 20140312–5156.
*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1472–000.
*Applicants:* Public Service Company of Colorado.
*Description:* 2014–3–12_PSC–WAPA–T-Poncha SS PPA–358–0.0.0 to be effective 2/24/2014.
*Filed Date:* 3/12/14.
*Accession Number:* 20140312–5207.
*Comments Due:* 5 p.m. ET 4/2/14.

*Docket Numbers:* ER14–1473–000.
*Applicants:* Central Maine Power Company.
*Description:* Central Maine Power Company submits tariff filing per 35.13(a)(2)(iii: Amended Warren Interconnection Agreement to be effective 3/13/2014.
*Filed Date:* 3/12/14.
*Accession Number:* 20140312–5214.
*Comments Due:* 5 p.m. ET 4/2/14.

Take notice that the Commission received the following electric reliability filings.

*Docket Numbers:* RD14–7–000.
*Applicants:* North American Electric Reliability Corporation.
*Description:* Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard PER–005–2 and Retirement of Reliability Standard PER–005–1.
*Filed Date:* 3/7/14.
*Accession Number:* 20140307–5142.
*Comments Due:* 5 p.m. ET 4/11/14.

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 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 12, 2014.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2014–06038 Filed 3–18–14; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2012–0159; FRL–9401–1]**

## Electronic Reporting; Toxic Substances Control Act Notifications of Substantial Risk and for Your Information Submissions

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

**ACTION:** Notice.

**SUMMARY:** EPA is announcing that notifications of substantial risk under section 8(e) of the Toxic Substances Control Act (TSCA) and voluntary For Your Information (FYI) submissions may now be filed electronically using EPA's electronic document submission system, the Central Data Exchange (CDX). Use of this electronic reporting option will streamline and reduce the administrative costs and burdens of submitting paper-based notifications of substantial risks and FYI submissions.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Katherine Sleasman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001: telephone number: (202) 564–7716; email address: *sleasman.katherine@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you manufacture, process, import, or distribute in commerce chemical substances and mixtures. The following North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Petroleum refiners and distributors (NAICS code 324).
- Chemical manufacturers, processors, and distributors (NAICS code 325).
- Electronics manufacturing (NAICS codes 334 and 335).
- Paints and coatings and adhesive manufacturing (NAICS code 3255).
- Cleaning compounds and similar products manufacturing (NAICS code 3256).
- Automobiles manufacturing (NAICS code 3361).
- Manufacturers of plastic parts and components (NAICS code 325211).
- Aircraft manufacturing (NAICS code 336411).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2012–0159. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required

to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

## II. Background

### *A. What action is the Agency taking?*

The Agency is announcing the availability of an electronic reporting option for use by those who must submit a notification of substantial risk under TSCA section 8(e) and by those who wish to voluntarily submit a FYI submission. EPA is providing an electronic reporting option as part of broader Federal Government efforts to move to modern, electronic methods of information collection, which streamline processes and reduce overall burdens for all involved.

EPA's TSCA section 8(e) 1978 policy statement and the amended 2003 policy statement describe how paper-based submissions should be delivered to the Agency (Refs. 1 and 2). This document supplements the policy statements and describes how to use CDX, the Chemical Safety and Pesticide Program (CSPP) option, and the Chemical Information Submission System (CISS) web-based reporting tool to submit the notifications of substantial risk required by TSCA section 8(e), as well as voluntary FYI submissions, electronically to the Agency. The Agency will make appropriate information about electronic reporting related to TSCA section 8(e) notification of substantial risk and FYI submissions available online at *http://www.epa.gov/oppt/tsca8e/pubs/reportingrequirements.html#submitreport.*

### *B. What is the Agency's authority for taking this action?*

TSCA section 8(e) states, ''Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.'' 15 U.S.C. 2607(e).

The Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504), (Ref. 3) requires Executive agencies to provide, when practicable, for:

1. The option of the electronic maintenance, submission, or disclosure of information as a substitute for paper.

2. The use and acceptance of electronic signatures.

### *C. Is Electronic reporting through CDX available for other EPA TSCA programs?*

For previous documents discussing electronic reporting under TSCA, including the use of CDX, see Refs. 4–7.

### *D. What are the benefits of CDX reporting and use of CISS?*

EPA encourages submitters of TSCA section 8(e) notifications of substantial risk and voluntary submissions, including FYI submissions, to adopt electronic reporting as the preferred submission method. Electronic reporting reduces the reporting burden for submitters by reducing the cost and time required to review, edit, and transmit data to the Agency, as well as the cost to retain required records related to that submission. CISS, the web-based reporting tool, enables efficient data transmittal and reduces errors through the use of the built-in validation procedures. CISS also allows submitters to share a draft submission within their organization, and more easily save a copy for their records or future use. The resource and time requirements to review and process data by the Agency will also be reduced and document storage and retrieval will require fewer resources. EPA will also benefit from receiving electronic submissions and being able to communicate back electronically with submitters.

## III. Electronic Reporting Procedures

This unit provides an overview of CDX, CSPP, and the CISS web-based reporting tool. It also provides instructions for the electronic reporting process for TSCA section 8(e) notifications of substantial risk and FYI submissions.

### *A. What is CDX?*

CDX is EPA's point of entry for environmental data submissions to the Agency. CDX also provides the capability for submitters to access their data through the use of web services. CDX enables EPA to work with stakeholders, including governments, regulated industries, and the public to enable streamlined, electronic submission of data via the Internet. To report under the procedures discussed in this notice, submitters would register with CDX, select the CSPP option, and use CISS to access reporting of TSCA section 8(e) notification of substantial risk and FYI submissions. More information about CDX is available online at *http://www.epa.gov/cdx.*

### *B. What is CISS?*

CISS is a web-based reporting tool for the submission of forms, reports, and other documents including TSCA section 8(e) notification of substantial risk and FYI submissions, electronically to the Agency. The tool is available for use with Windows, Mac, Linux, and UNIX computer systems, using ''Extensible Markup Language'' (XML) specifications for efficient data transmission across the Internet. CISS provides user-friendly navigation, works with CDX to secure online communication, creates a completed Portable Document Format (PDF) for review prior to submission, and enables data, reports, and other information to be submitted easily as PDF attachments, or by other electronic standards, such as XML. As currently implemented, one or more representatives from each facility must establish an account with EPA's CDX in order to prepare, transmit, certify, and submit forms, reports, and other documents.

### *C. How will TSCA Section 8(e) notification of substantial risk and FYI submissions be submitted via the internet using CDX?*

Submitters register with EPA's CDX, select the CSPP Program, and use CISS to prepare a data file for submission.

1. *Registering with CDX.* To submit electronically to EPA via CDX, a user would register with CDX available online at *https://cdx.epa.gov.* CDX registration enables EPA to authenticate user identities and verify user authorizations.

To register in CDX, the CDX registrant (also referred to as ''Electronic Signature Holder'' or ''Public/Private Key Holder'') would agree to the terms and conditions, provide information about the user and organization, select a user name and password, and follow the procedures outlined in the guidance document for CDX available online at *http://www.epa.gov/cdr/tools/CDX_Registration_Guide_v0_02.pdf.*

2. *Submission.* Submitters choosing to submit electronically will use CISS to prepare their submissions. CISS guides users through a ''hands-on'' process of creating an electronic submission. Once a user completes the relevant data fields and attaches appropriate PDF files or other file types, such as XML files, the web-based tool validates the submission by performing a basic error check and makes sure all the required fields and attachments are provided and complete.

Further instructions on submitting information and instructions for uploading PDF attachments or other file types, such as XML will be available through CISS reporting guidance available online at *http://www.epa.gov/oppt/tsca8e/pubs/reporting requirements.html#submitreport.*

*D. Can CBI be submitted using CISS?*

Yes, CISS enables the user to submit CBI in an electronic format. All information sent by the user via CDX is transmitted securely to protect CBI. CISS also guides the user through the process of submitting CBI by prompting the user to check a CBI checkbox if using a form or by submitting a scanned document containing CBI by bracketing, underlining, or otherwise marking the confidential information on the document prior to scanning. As with paper-based submissions, a sanitized copy of any document containing CBI would be included by the user in the electronic submission. The CISS reporting guidance instructs users on how to submit CBI and substantiate CBI claims information using CISS.

*E. How will CBI be protected when submitting via CDX?*

The Agency ensures secure transmission of the data, reports, and other documents sent from the user through the Internet via the Transport Layer Security (TLS) 1.0 protocol. TLS 1.0 is a widely used approach for securing Internet transactions and is endorsed by the National Institute of Standards and Technology (NIST) as a means for protecting data sent over the Internet. See NIST Special Publication 800–52, ''Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations,'' available online at *http://csrc.nist.gov/publications/nistpubs/800-52/SP800-52.pdf.*

In addition, CISS enables the submitter to electronically sign, encrypt, and transmit submissions, which the Agency subsequently provides back to the user as an unaltered copy of record. This assures the user that the Agency has received exactly what the user sent to the Agency. CISS encrypts using a module based on the 256-bit Advanced Encryption Standard (AES) adopted by NIST. Details about AES can be found on the NIST Web site at *http://csrc.nist.gov/publications/fips/fips197/fips-197.pdf.* EPA may incorporate other encryption modules into future versions of CISS. Information submitted via CDX is processed within EPA by secure systems certified for compliance with Federal Information Processing Standards available online at *http://www.nist.gov/itl/fips.cfm.*

## IV. References

The following is a list of references that are specifically referenced in this document and placed in the docket that was established under docket ID number EPA–HQ–OPPT–2012–0159.

1. EPA. Toxic Substance Control Act; Notification of Substantial Risk Under Section 8(e); Notice. **Federal Register** (43 FR 11110, March 16, 1978) (FRL–849–2).

2. EPA. TSCA Section 8(e); Notification of Substantial Risk; Policy Clarification and Reporting Guidance; Notice. **Federal Register** (68 FR 33129, June 3, 2003) (FRL–7287–4).

3. EPA. Cross-Media Electronic Reporting; Final Rule. **Federal Register** (70 FR 59848, October 13, 2005) (FRL–7977–1).

4. EPA. TSCA Inventory Update Reporting Rule; Electronic Reporting, Direct final rule. **Federal Register** (71 FR 52494, September 6, 2006) (FRL–7752–8).

5. EPA. TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations; Final rule. **Federal Register** (75 FR 773, January 6, 2010) (FRL–8794–5).

6. EPA. TSCA Inventory Update Reporting Modifications; Chemical Data Reporting; Final rule. **Federal Register** (76 FR 50816, August 16, 2011) (FRL–8872–9).

7. EPA. Electronic Reporting Under the Toxic Substances Control Act; Proposed rule. **Federal Register** (77 FR 22707, April 17, 2012) (FRL–9337–5).

## V. Statutory and Executive Order Reviews

This action is not a regulation, nor does it impose any binding requirements. Submitters of TSCA section 8(e) notifications of substantial risk are not required to adopt the electronic reporting option described in this document in order to satisfy the statutory requirements. In addition, this action does not require anyone seeking to voluntarily submit information, including FYI submissions, to do so using an electronic reporting method.

*A. Executive Order 12866 and Executive Order 13563*

This action is not a ''regulatory action'' as that term is defined in Executive Order 12866 entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Therefore, it is not subject to review by under Executive Orders 12866 and 13563 entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, an collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations, after appearing in the **Federal Register**, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument or form, if applicable.

The information collection activities related to TSCA section 8(e) and FYI submissions, including the CDX registration activities associated with the electronic reporting option, have been approved by OMB under OMB control number 2070–0046 (EPA ICR No. 0794.13). The estimated burden of initial section 8(e) or FYI submissions is 51 hours per response when submitted in paper and 49 hours per response when submitted electronically. The estimated burden of follow-up/supplemental section 8(e) or FYI submissions is 5 hours per response when submitted in paper and 4 hours per response when submitted electronically. The total annual burden approved by OMB is 18,518 hours. Burden is defined in 5 CFR 1320.3(b).

*C. Regulatory Flexibility Act*

Since this action is not a rule under the Administrative Procedure Act (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

*D. Unfunded Mandates Reform Act and Executive Orders 13132 and 13175*

This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal Government and States or Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian Tribes. As a result, no action is required under Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538).

*E. Executive Orders 13045, 13211, and 12898*

As indicated previously, this action is not a ''regulatory action'' as defined by Executive Order 12866. As a result, this action is not subject to Executive Order

13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) and Executive Order 13211 entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). In addition, this action also does not require any special considerations under Executive Order 12898 entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

*F. National Technology Transfer and Advancement Act*

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

**VI. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 et seq. does not apply because this action is not a rule as that term is defined in 5 U.S.C. 804(3).

**List of Subjects**

Environmental protection, Administrative practice and procedure, Business and industry, Chemicals, Reporting and recordkeeping requirements.

Dated: March 12, 2014.

**James Jones,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2014–06050 Filed 3–18–14; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2014–0189; FRL–9908–30–ORD]**

## Human Studies Review Board; Notification of a Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Office of the Science Advisor announces a public meeting of the Human Studies Review Board to advise the Agency on the EPA ethical and scientific reviews of research with human subjects.

**DATES:** This public meeting will be held on April 8–9, 2014, from approximately 9:30 p.m. to approximately 5:30 p.m. Eastern Time. Comments may be submitted on or before noon (Eastern Time) on Tuesday, April 1, 2014.

**ADDRESSES:** The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

*Comments:* Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2014–0189, by one of the following methods:

*Internet: http://www.regulations.gov:* Follow the online instructions for submitting comments.

*Email: ORD.Docket@epa.gov.*

*Mail:* The EPA Docket Center EPA/DC, ORD Docket, Mail code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

*Hand Delivery:* The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA WJC West, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site *http://www.epa.gov/epahome/dockets.htm.*

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2014–0189. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any electronic storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes to receive further information should contact Jim Downing at telephone number (202) 564–2468; fax: (202) 564–2070; email address: *downing.jim@epa.gov;* mailing address Environmental Protection Agency, Office of the Science Advisor, Mail code 8105R, 1200 Pennsylvania Avenue NW., Washington, DC 20460. General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/hsrb.*

**SUPPLEMENTARY INFORMATION:**

*Meeting access:* Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the persons listed under **FOR FURTHER INFORMATION CONTACT** at least ten business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT,** so that appropriate arrangements can be made.

*Procedures for providing public input:* Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Section I, ''Public Meeting'' under subsection D. ''How May I Participate in this Meeting?'' of this notice.

Webcast: This meeting may be webcast. Please refer to the HSRB Web site, *http://www.epa.gov/hsrb/* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

**I. Public Meeting**

*A. Does this action apply to me?*

This action is directed to the public in general. This Notice may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by the EPA, or to persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act. This notice might also be of special interest to participants of studies involving human subjects, or representatives of study participants or

experts on community engagement. Since many entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I access electronic copies of this document and other related information?*

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA WJC West, at 1301 Constitution Avenue NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site *(http://www.epa.gov/epahome/dockets.htm).* The Agency's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by the last week of March 2014. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/hsrb/.* For questions on document availability, or if you do not have access to the Internet, consult Jim Downing listed under **FOR FURTHER INFORMATION CONTACT**.

*C. What should I consider as I prepare my comments for the EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data that you used to support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.
5. To ensure proper receipt by the EPA, be sure to identify the Docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*D. How may I participate in this meeting?*

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by the EPA, it is imperative that you identify Docket ID number EPA–HQ–ORD–2014–0189 in the subject line on the first page of your request.

1. *Oral comments.* Requests to present oral comments will be accepted up to Tuesday, April 1, 2014. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to Jim Downing, under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, Tuesday, April 1, 2014, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Official to review the meeting agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation and the organization (if any) the individual will represent. Oral comments before the HSRB are generally limited to five minutes per individual or organization. Please note that this includes all individuals appearing either as part of, or on behalf of, an organization. While it is our intent to hear a full range of oral comments focused on the ethical and scientific issues of the topics being considered by the Board, we do not intend to permit organizations to expand the time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meeting. For the Board to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of this meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the HSRB members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the agency strongly encourages you to submit such comments no later than noon, Eastern Time, Tuesday, April 1, 2014. You should submit your comments using the instructions in Section I., under subsection C., ''What Should I Consider as I Prepare My Comments for the EPA?'' In addition, the agency also requests that persons submitting comments directly to the docket also provide a copy of their comments to Jim Downing listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

*E. Background*

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App.2 § 9. The HSRB provides advice, information, and recommendations to the EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through the Agency's Science Advisor.

1. *Topics for discussion.* At its meeting on April 8–9, 2014, EPA's Human Studies Review Board will consider ethical and scientific issues surrounding the following topics:

a. AEATF–II Protocol: A Study for Measurement of Potential Dermal and Inhalation Exposure During Manual Pouring of Two Solid Formulations Containing an Antimicrobial
b. AEATF–II Protocol: A Study for Measurement of Potential Dermal and Inhalation Exposure During Application of Latex Paint Containing

an Antimicrobial Pesticide Product Using a Brush and Roller for Indoor Surface Painting

c. AEATF Protocol: Determination of Removal Efficiency of 1,2-Benzisothiazol-3(2H)-one (BIT) from Hand Surfaces Using an Isopropyl Alcohol/Water Wipe and Wash Procedure

d. Laboratory Evaluation of Bite Protection from Repellent Impregnated Clothing for the United States Military

e. Background presentation on the Repellency Awareness Graphic and possible implications for the HSRB

f. Report from the HSRB Work Group of the Return of Individual Research Results

2. *Meeting minutes and reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information regarding the Board's final meeting report, will be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: March 10, 2014.

**Glenn Paulson,**

*Science Advisor.*

[FR Doc. 2014–05908 Filed 3–18–14; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9908–32–OSWER]**

## FY2014 Supplemental Funding for Brownfields Revolving Loan Fund (RLF) Grantees

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

**ACTION:** Notice of the availability of funds.

**SUMMARY:** The Environmental Protection Agency's (EPA) Office of Brownfields and Land Revitalization (OBLR) plans to make available approximately $6 million to provide supplemental funds to Revolving Loan Fund capitalization grants previously awarded competitively under section 104(k)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Brownfields Cleanup Revolving Loan Fund (BCRLF) pilots awarded under section 104(d)(1) of CERCLA that have not transitioned to section 104(k)(3) grants are not eligible to apply for these funds. EPA will consider awarding supplemental funding only to RLF grantees who have demonstrated an ability to deliver programmatic results by making at least one loan or subgrant. The award of these funds is based on the criteria described at CERCLA 104(k)(4)(A)(ii).

The Agency is now accepting requests for supplemental funding from RLF grantees. Requests for funding must be submitted to the appropriate EPA Regional Brownfields Coordinator (listed below) by April 18, 2014. Funding requests for hazardous substances and/or petroleum funding will be accepted. Specific information on submitting a request for RLF supplemental funding is described below and additional information may be obtained by contacting the EPA Regional Brownfields Coordinator.

**DATES:** This action is effective March 19, 2014.

**ADDRESSES:** A request for supplemental funding must be in the form of a letter addressed to the appropriate Regional Brownfields Coordinator (see listing below) with a copy to Megan Quinn, *Quinn.Megan@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Megan Quinn, U.S. EPA, (202) 566–2773 or the appropriate Brownfields Regional Coordinator.

**SUPPLEMENTARY INFORMATION:**

### Background

The Small Business Liability Relief and Brownfields Revitalization Act added section 104(k) to CERCLA to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup and job training. Section 104(k) includes a provision for EPA to, among other things, award grants to eligible entities to capitalize Revolving Loan Funds and to provide loans and subgrants for brownfields cleanup. Section 104(k)(4)(A)(ii) authorizes EPA to make additional grant funds available to RLF grantees for any year after the year for which the initial grant is made (noncompetitive RLF supplemental funding) taking into consideration:

(I) the number of sites and number of communities that are addressed by the revolving loan fund;

(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) such other similar factors as the [Agency] considers appropriate to carry out this subsection.

### Eligibility

In order to be considered for supplemental funding, grantees must demonstrate that they have expended existing funds and that they have a clear plan for quickly expending requested additional funds. Grantees must demonstrate that they have made at least one loan or subgrant prior to applying for this supplemental funding and have significantly depleted existing available funds. For FY2014, EPA defines ''significantly depleted funds'' as any grant where $400,000 or less remains uncommitted. Additionally, the RLF recipient must have demonstrated a need for supplemental funding based on, among other factors, the number of sites that will be addressed; demonstrated the ability to make loans and subgrants for cleanups that can be started and completed expeditiously (i.e., ''shovel-ready'' projects) and will lead to redevelopment; demonstrated the existence of additional leveraged funds to complete the project in a timely manner and move quickly from cleanup to redevelopment, including the use of tax incentives such as new market tax credits, direct funding or other resources to advance the project to completion; demonstrated the ability to administer and revolve the capitalization funding in the RLF grant; demonstrated an ability to use the RLF grant to address funding gaps for cleanup; and demonstrated that they have provided a community benefit from past and potential loan(s) and/or subgrant(s). Special consideration may be given to those communities affected by plant closures or other economic disruptions. Special consideration may also be given to those grantees that can demonstrate projects that have a clear prospect of aiding the in-sourcing of manufacturing capacity and keeping and/or adding jobs, or otherwise creating jobs, in the affected area. EPA encourages innovative approaches to maximizing revolving and leveraging with other funds, including use of grants funds as a loan loss guarantee, combining with other government or private sector lending resources. Applicants for supplemental funding must contact the appropriate Regional Brownfields Coordinator below to obtain information on the format for supplemental funding applications for their region. When requesting supplemental funding, applicants must specify whether they are seeking funding for sites contaminated by hazardous substances or petroleum.

Applicants may request both types of funding.

REGIONAL CONTACTS

| Region | States | Address/phone number/email |
|---|---|---|
| EPA Region 1, Frank Gardner, *Gardner.Frank@epa.gov* | CT, ME, MA, NH, RI, VT | 5 Post Office Square, Boston, MA 02109–3912, Phone (617) 918–1278, Fax (617) 918–1291. |
| EPA Region 2, Lya Theodoratos, *Theodoratos.Lya@epa.gov*. | NJ, NY, PR, VI | 290 Broadway, 18th Floor, New York, NY 10007, Phone (212) 637–3260, Fax (212) 637–3083. |
| EPA Region 3, Tom Stolle, *Stolle.Tom@epa.gov* | DE, DC, MD, PA, VA, WV | 1650 Arch Street, Mail Code 3HS51, Philadelphia, Pennsylvania 19103, Phone (215) 814–3129, Fax (215) 814–5518. |
| EPA Region 4, Wanda Jennings, *Jennings.Wanda@epa.gov*. | AL, FL, GA, KY, MS, NC, SC, TN. | Atlanta Federal Center, 61 Forsyth Street SW., 10TH FL , Atlanta, GA 30303–8960, Phone (404) 562–8682, Fax (404) 562–8439. |
| EPA Region 5, Keary Cragan, *Cragan.Keary@epa.gov* | IL, IN, MI, MN, OH, WI | 77 West Jackson Boulevard, Mail Code SE–4J, Chicago, Illinois 60604–3507, Phone (312) 353–5669, Fax (312) 886–7190. |
| EPA Region 6, Mary Kemp, *Kemp.Mary@epa.gov* | AR, LA, NM, OK, TX | 1445 Ross Avenue, Suite 1200 (6SF–PB), Dallas, Texas 75202–2733, Phone (214) 665–8358, Fax (214) 665–6660. |
| EPA Region 7, Susan Klein, *Klein.Susan@epa.gov* | IA, KS, MO, NE | 11201 Renner Blvd, Lenexa, Kansas 66219, Phone (913) 551–7786, Fax (913) 551–8688. |
| EPA Region 8, Dan Heffernan, *Heffernan.Daniel@epa.gov*. | CO, MT, ND, SD, UT, WY | 1595 Wynkoop Street (EPR–B), Denver, CO 80202–1129, Phone (303) 312–7074, Fax (303) 312–6065. |
| EPA Region 9, Noemi Emeric-Ford, *Emeric-Ford.Noemi@epa.gov*. | AZ, CA, HI, NV, AS, GU | 75 Hawthorne Street, WST–8, San Francisco, CA 94105, Phone (213) 244–1821, Fax (415) 972–3364. |
| EPA Region 10, Susan Morales, *Morales.Susan@epa.gov*. | AK, ID, OR, WA | 1200 Sixth Avenue, Suite 900, Mailstop: ECL–112 Seattle, WA 98101, Phone (206) 553–7299, Fax (206) 553–0124. |

Dated: March 12, 2014.

**David R. Lloyd,**

*Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.*

[FR Doc. 2014–06048 Filed 3–18–14; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 19, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0849.

*Title:* Commercial Availability of Navigation Devices.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 962 respondents; 585,800 responses.

*Estimated Time per Response:* 0.00278 hours—120 hours.

*Frequency of Response:* Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement; Annual reporting requirement; Semi-annual reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority is contained in Sections 4(i), 303(r) and 629 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 48,152 hours.

*Total Annual Cost:* $2,620.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* In January 2013, the D.C. Circuit released its opinion in *EchoStar Satellite L.L.C.* v. *FCC,* 704 F.3d 992 (D.C. Cir. 2013). In that decision, the D.C. Circuit vacated the

Second Report and Order, FCC 03–225 (released October 9, 2003). Therefore, the information collection requirements that were contained in 47 CFR 76.1905(c)(2) and (c)(3), 47 CFR 76.1906(a)(1) and (b) and the complaint requirement are no longer a part of this information collection. The Commission is revising this collection to remove those requirements and the burden hours and cost burden associated with them.

These information collection requirements are also a part of this collection and have not changed since last approved by the Office of Management and Budget (OMB):

*47 CFR 76.1205(b)(1)* states a multichannel video programming provider that is subject to the requirements of Section 76.1204(a)(1) must provide the means to allow subscribers to self-install the CableCARD in a CableCARD-reliant device purchased at retail and inform a subscriber of this option when the subscriber requests a CableCARD. This requirement shall be effective August 1, 2011, if the MVPD allows its subscribers to self-install any cable modems or operator-leased set-top boxes and November 1, 2011 if the MVPD does not allow its subscribers to self-install any cable modems or operator-leased set-top boxes.

*47 CFR 76.1205(b)(1)(A)* states that this requirement shall not apply to cases in which neither the manufacturer nor the vendor of the CableCARD-reliant device furnishes to purchasers appropriate instructions for self-installation of a CableCARD, and a manned toll-free telephone number to answer consumer questions regarding CableCARD installation but only for so long as such instructions are not furnished and the call center is not offered.

The requirements contained in Section 76.1205 are intended to ensure that consumers are able to install CableCARDs in the devices that they purchase at retail, which the Commission determined is essential to a functioning retail market.

*47 CFR 76.1205(b)(2)* states effective August 1, 2011, provide multi-stream CableCARDs to subscribers, unless the subscriber requests a single-stream CableCARD.This requirement will ensure that consumers have access to CableCARDs that are compatible with their retail devices, and can request such devices from their cable operators.

*47 CFR 76.1205(b)(5)* requires to separately disclose to consumers in a conspicuous manner with written information provided to customers in accordance with Section 76.1602, with written or oral information at consumer request, and on Web sites or billing inserts. This requirement is intended to ensure that consumers understand that retail options are available and that cable operators are not subsidizing their own devices with service fees in violation of Section 629 of the Act.

*47 CFR 15.123(c)(3)* states subsequent to the testing of its initial unidirectional digital cable product model, a manufacturer or importer is not required to have other models of unidirectional digital cable products tested at a qualified test facility for compliance with the procedures of Uni-Dir-PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma'' (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(1). The manufacturer or importer shall ensure that all subsequent models of unidirectional digital cable products comply with the procedures in the Uni-Dir-PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma'' (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. The manufacturer or importer shall further submit documentation verifying compliance with the procedures in the Uni-Dir-PICS–I01–030903: ''Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma'' (incorporated by reference, see § 15.38) to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

*47 CFR15.123(c)(5)(iii)* states subsequent to the successful testing of its initial M–UDCP, a manufacturer or importer is not required to have other M–UDCP models tested at a qualified test facility for compliance with M-Host UNI–DIR–PICS–IOI–061101 (incorporated by reference, see § 15.38) unless the first model tested was not a television, in which event the first television shall be tested as provided in § 15.123(c)(5)(i). The manufacturer or importer shall ensure that all subsequent models of M–UDCPs comply with M-Host UNI–DIR–PICS–IOI–061101 (incorporated by reference, see § 15.38) and all other applicable rules and standards. The manufacturer or importer shall maintain records indicating such compliance in accordance with the verification procedure requirements in part 2, subpart J of this chapter. For each M–UDCP model, the manufacturer or importer shall further submit documentation verifying compliance with M-Host UNI–DIR–PICS–IOI–061101 to the testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States.

*47 CFR 76.1203* provides that a multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service.

*47 CFR 76.1205* states that technical information concerning interface parameters which are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request.

*47 CFR 76.1207* states that the Commission may waive a regulation adopted under this Part for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests are to be made pursuant to 47 CFR 76.7.

*47 CFR 76.1208* states that any interested party may file a petition to the Commission for a determination to provide for a sunset of the navigation devices regulations on the basis that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest.

*47 CFR 15.118(a) and 47 CFR 15.19(d) (label and information disclosure)*—The

U.S. Bureau of the Census reports that, at the end of 2002, there were 571 U.S. establishments that manufacture audio and visual equipment. These manufacturers already have in place mechanisms for labeling equipment and including consumer disclosures in the form of owners' manuals and brochures in equipment packaging. We estimate that manufacturers who voluntarily decide to label their equipment will need no more than 5 hours to develop a label or to develop wording for a consumer disclosure for owners' manuals/brochures to be included with the device. Once developed, we do not anticipate any ongoing burden associated with the revision/modification of the label, if used, or the disclosure.

*Status Reports*—Periodic reports are required from large cable multiple system operators detailing CableCARD deployment/support for navigation devices. (This requirement is specified in FCC 05–76, CS Docket No. 97–80).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–05930 Filed 3–18–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 19, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0157.

*Title:* Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 200 respondents; 200 responses.

*Frequency of Response:* Annual and on occasion reporting requirements.

*Estimated time per response:* 0.25 hours.

*Total annual burden:* 50 hours.

*Total annual costs:* $15,000.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* 47 CFR 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter to the Commission the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The FCC staff uses the letter to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–05929 Filed 3–18–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 19, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0572.

*Title:* International Circuit Status Reports, 47 CFR 43.82.

*Form No.:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Responses and Respondents:* 75 respondents and 75 responses.

*Estimated Time per Response:* 1 hour–50 hours.

*Frequency of Response:* Annual reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The Commission has authority for this information collection pursuant to the Communications Act of 1934 Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219 and 220.

*Total Annual Burden:* 736 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general there is no need for confidentiality with this collection of information.

*Needs and Uses:* The Federal Communications Commission (''Commission'') is requesting a three-year extension of the delegated authority information collection under OMB Control No. 3060–0572 titled, ''International Circuit Status Reports, 47 CFR 43.82'' from the Office of Management and Budget (OMB).

Section 47 CFR 43.82 of the Commission's rules requires that each common carrier engaged in providing facilities-based international telecommunications services between the United States and foreign points shall file annually the status of its circuits used to provide international services. The annual circuit-status report, required by Section 43.82, provides the Commission, the carriers, and others information on how U.S. international carriers use their circuits. The Commission uses the information from the circuit-status reports to ensure that carriers with market power do not use their access to circuit capacity to engage in any anti-competitive behavior. The Commission also uses the reports to implement the requirement in Section 9 of the Communications Act of 1934, as amended, that carriers pay annual regulatory fees for each of the bearer circuits they own.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–05932 Filed 3–18–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 19, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0881.

*Title:* Section 95.861, Interference.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 175 respondents; 175 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Recordkeeping requirement, third party disclosure requirement, and on occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i) and 157, as amended.

*Total Annual Burden:* 175 hours.

*Annual Cost Burden:* $43,700.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* Section 95.861(c) requires that licensees in the 218–219 MHz service must provide a copy of its plan to every TV Channel 13 station whose Grade B predicted contour overlaps the licensed service area as required by § 95.815(a) of the Commission's rules. This plan must include an analysis of the co- and adjacent channel interference potential of proposed systems in the 218–219 MHz service, identify methods being used to minimize interference, and show how the proposed systems will meet the service requirements set forth in § 95.831 of the Commission's rules. This plan must be sent to the TV Channel 13 licensee(s) within 10 days from the date the 218–219 MHz service licensee submits the plan to the Commission. Updates to this plan must be sent to the TV Channel 13 licensee(s)

within 10 days from the date that such updates are filed with the Commission pursuant to § 95.815.

Section 95.861(e) requires that each 218–219 MHz service licensee investigate and eliminate harmful interference to television broadcasting and reception, from its component cell transmitter stations (CTSs) and response transmitter units (RTUs) within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint.

This information will be used to monitor the co- and adjacent channel interference potential of proposed systems in the 218–219 MHz service, and to identify methods being used to minimize interference, as well as to show how the proposed systems will meet the service requirements set forth in § 95.831 of the Commission's rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–05975 Filed 3–18–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before May 19, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0106.

*Title:* Part 43 Reporting Requirements for U.S. Providers of International Telecommunications Services and Affiliates; 47 CFR 43.61.

*Form No.:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Responses and Respondents:* 1,255 respondents and 1,255 responses.

*Estimated Time per Response:* 2 hours–220 hours.

*Frequency of Response:* Annual reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 1, 4(i), 4(j) 11, 201–205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 211, 214, 219, 220, 303(r), 309 and 403.

*Total Annual Burden:* 19,530 hours.

*Total Annual Cost:* $339,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* In general there is no need for confidentiality with this collection of information.

*Needs and Uses:* The Federal Communications Commission (''Commission'') is requesting a three-year extension of OMB Control No. 3060–0106 titled, ''Part 43 Reporting Requirements for U.S. Providers of International Telecommunications Services and Affiliates; 47 CFR 43.61.''

The reporting requirements for which the Commission is seeking a three year approval from the Office of Management and Budget (OMB) are as follows:

**47 CFR 43.61: Reports of international telecommunications traffic**

(a) Each common carrier engaged in providing international telecommunications service between the United States (as defined in the Communications Act, as amended, 47 U.S.C. 153) and any country or point outside that area shall file a report with the Commission not later than July 31 of each year for service actually provided in the preceding calendar year.

(1) The information contained in the reports shall include actual traffic and revenue data for each and every service provided by a common carrier, divided among service billed in the United States, service billed outside the United States, and service transiting the United States.

(2) Each common carrier shall submit a revised report by October 31 identifying any inaccuracies included in the annual report exceeding five percent of the reported figure.

(3) The information required under this section shall be furnished in conformance with the instructions and reporting requirements prepared under the direction of the Chief, Wireline Competition Bureau, prepared and published as a manual, in consultation and coordination with the Chief, International Bureau.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2014–05931 Filed 3–18–14; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 14–249]**

### Notice of Suspension and Commencement of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (the ''Bureau'') debars Bryan J. Cahoon from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years.

The Bureau takes this action to protect the E-Rate Program from waste, fraud, and abuse.

**DATES:** Debarment commences on the date Mr. Bryan J. Cahoon receives the debarment letter or March 19, 2014, whichever date comes first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Joy M. Ragsdale, Attorney Advisor, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by telephone at (202) 418–1697 or by email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Terry.Cavanaugh@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Bureau debarred Mr. Bryan J. Cahoon from the schools and libraries service support mechanism for a period of three years pursuant to 47 CFR 54.8. Attached is the debarment letter, DA 14–249, which was mailed to Mr. Cahoon and released on February 24, 2014. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com.*

Federal Communications Commission.

**Theresa Z. Cavanaugh,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

February 24, 2014

DA 14–249

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL

Mr. Bryan J. Cahoon
Register Number 95443–038
FMC Devens
Federal Medical Center
P.O. Box 879
Ayer, MA 01432

Re: Notice of Suspension and Initiation of Debarment Proceedings FCC Case No. EB–IHD–13–00010969

Dear Mr. Cahoon:

The Federal Communications Commission (Commission) has received notice of your conviction for fraud and theft of federal funds in violation of 18 U.S.C. 666(a)(1)(A) in connection with the federal schools and libraries universal service support mechanism (E-Rate program).[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from participating in activities associated with the E-Rate program. In addition, the Enforcement Bureau (Bureau) hereby notifies you that the Bureau will commence E-Rate program debarment proceedings against you.[2]

**I. Notice of Suspension**

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the [E-Rate program]'' from receiving the benefits associated with that program.[3] The statutory provisions and Commission rules relating to the E-Rate program are designed to ensure that all E-Rate funds are used for their intended purpose.[4] Sections 54.503 and 54.504 of the Commission's rules provide that an eligible entity must seek competitive bids for all services eligible for support and must comply with all applicable state and local competitive bidding requirements.[5] Furthermore, the E-Rate program requires applicants to solicit services based on a fair and open competitive bidding process.[6]

On June 28, 2013, you pleaded guilty to one count of fraud and theft of federal funds in connection with the E-Rate program while employed both as the Director of the Information Technology Department (IT Department) for the City of Lawrence, Massachusetts and also as a city subcontractor through your company, Networks@Home, LLC (Networks@Home).[7] As head of the IT Department, your responsibilities included preparing requests for proposals, reviewing and identifying the lowest qualified bids submitted in response to requests for proposal, as well as submitting final proposals to the City of Lawrence's IT Purchasing Department to certify compliance with Massachusetts's procurement laws.[8]

From early 2008 through December 2009, the City of Lawrence received federal grants of over $76 million, including approximately $2.3 million in E-Rate funds, to improve the network and technological infrastructure of the city's schools and libraries.[9] During that same period, you orchestrated a scheme to circumvent the state's procurement requirements that provided bidding information and instructions to your friends and business associates, who were awarded at least eight contracts with the city totaling $178,555.[10]

You also hired friends and associates to perform cabling and rewiring work for the city as interns for the IT Department and then, through Networks@Home and another company for which Networks@Home was a subcontractor, billed the City of Lawrence for that work at inflated rates.[11] As a result, the city was double-billed for the same work.[12] At least a portion of the funds that your friends and business associates and Networks@Home received as a result of these schemes were E-Rate program funds.[13]

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea in *United States* v. *Cahoon,* Criminal Docket No. 1:13–cr–10188–RWZ–1, Plea Agreement (D. Mass. filed June 28, 2013) (*Plea Agreement*).

[2] 47 CFR. 54.8; 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the E-Rate program in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*Second Report and Order*) (adopting Section 54.521 to suspend and debar parties from the E-Rate program). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering Section 54.521 of the universal service debarment rules as Section 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

[3] *Second Report and Order,* 18 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[4] *NEC-Business Network Solutions, Inc.,* Notice of Debarment and Order Denying Waiver Petition, 21 FCC Rcd 7491, 7493, para. 7 (2006).

[5] 47 CFR 54.503, 54.504(a)(1)(vi); *see Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Report and Order, 12 FCC Rcd 8776, 9078–80, paras. 480–81 (1997) (subsequent history omitted) (finding that without competitive bidding requirements, the applicant may not receive the most cost-effective services); *see also Lazo Technologies, Inc.,* Order on Reconsideration, 26 FCC Rcd 16661, 16664, para. 7 (2011).

[6] 47 CFR 54.503(a). The Commission has upheld Universal Service Administrative Company (USAC) decisions that found applicants and service providers violated the Commission's fair and open competitive bidding requirements and E-Rate program rules. *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* SLD Nos. 321479, CC Docket Nos. 96–45, 97–21, Order, 18 FCC Rcd 26407, 26408–09, paras. 1–4 (2003); *see also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service,* Order, 16 FCC Rcd 4028, 4032–33, para. 10 (2000).

[7] *See Plea Agreement* at 1, 17; *United States v. Cahoon,* Criminal Docket No. 1:13–cr–10188–RWZ–1, Information at 1 (D. Mass. filed June 19, 2013) (Information); *see also* United States Attorney's Office, District of Massachusetts, News, *Former Lawrence IT Director Pleads Guilty to Fraud and Theft,* Aug. 14, 2013, *at http://www.justice.gov/usao/ma/news/2013/August/CahoonBryanPleaPR.html* (*Press Release*).

[8] Information at 2.

[9] *Id.* at 3.

[10] *Id.* at 3–5.

[11] *Id.* at 2–3, 13–16.

[12] *Id.* at 5.

[13] *Id.* at 13–14.

On December 17, 2013, the United States District Court for the District of Massachusetts sentenced you to serve 12 months and a day in prison followed by a one-year period of supervised release.[14] In addition, the court ordered you to pay $465,000 in restitution and a $100 special assessment.[15]

Pursuant to section 54.8(b) of the Commission's rules,[16] upon your conviction for theft of E-Rate funds, the Bureau is required to suspend you from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[17] Your suspension becomes effective upon either your receipt of this letter or its publication in the **Federal Register**, whichever comes first.[18]

In accordance with the Commission's suspension and debarment rules, you may contest this suspension or the scope of this suspension by filing arguments, with any relevant documents, within thirty (30) calendar days of your receipt of this letter or its publication in the **Federal Register**, whichever comes first.[19] Such requests, however, will not ordinarily be granted.[20] The Bureau may reverse or limit the scope of a suspension only upon a finding of extraordinary circumstances.[21] The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.[22]

**II. Initiation of Debarment Proceedings**

In addition to requiring your immediate suspension from the E-Rate program, your conviction is cause for debarment as defined in section 54.8(c) of the Commission's rules.[23] Therefore, pursuant to section 54.8(b) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[24]

As with the suspension process, you may contest the proposed debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever comes first.[25] The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information you may have filed.[26] If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever comes first.[27]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the E-Rate program for three years from the date of debarment.[28] The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.[29]

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554 and to the attention of Joy M. Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 with a copy to Theresa Z. Cavanaugh, Division Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. All messenger or hand delivery filings must be submitted without envelopes.[30] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Joy Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of your response via email to Joy M. Ragsdale, *Joy.Ragsdale@fcc.gov* and to Theresa Z. Cavanaugh, *Terry.Cavanaugh@fcc.gov*.

If you have any questions, please contact Ms. Ragsdale via U.S. postal mail, email, or by telephone at (202) 418–1697. You may contact me at (202) 418–1553 or at the email address noted above if Ms. Ragsdale is unavailable.

Sincerely yours,

Theresa Z. Cavanaugh
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Johnnay Schrieber, Universal Service Administrative Company (via email)
Rashann Duvall, Universal Service Administrative Company (via email)
William F. Bloomer, United States Attorney's Office, District of Massachusetts (via email)

[FR Doc. 2014–06082 Filed 3–18–14; 8:45 am]

BILLING CODE 6712–01–P

[14] *United States v. Cahoon,* Criminal Docket No. 1:13–cr–10188–RWZ–1, Judgment at 2–3 (D. Mass. filed Dec. 17, 2013).

[15] *United States v. Cahoon,* Criminal Docket No. 1:13–cr–10188–RWZ–1, Order of Restitution (D. Mass. filed Dec. 17, 2013). This restitution order includes $333,306.49 payable to USAC.

[16] 47 CFR 54.8(a)(4); *see Second Report and Order,* 18 FCC Rcd at 9225–27, paras. 67–74.

[17] 47 CFR 54.8(a)(1), (d).

[18] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[19] 47 CFR 54.8(e)(4).

[20] *Id.*

[21] 47 CFR 54.8(f).

[22] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), (f).

[23] ''Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Associated activities ''include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.'' *Id.* 54.8(a)(1).

[24] *Id.* 54.8(b).

[25] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[26] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[27] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* 54.8(f).

[28] *Second Report and Order,* 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), (g).

[29] 47 CFR 54.8(g).

[30] *See* FCC *Public Notice,* DA 09–2529 for further filing instructions (rel. Dec. 3, 2009).

## FEDERAL ELECTION COMMISSION

**[Notice 2014–06]**

## Filing Dates for the New Jersey Special Elections in the 1st Congressional District

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of filing dates for special elections.

**SUMMARY:** New Jersey has scheduled special elections on June 3, 2014, and November 4, 2014, to fill the U.S. House of Representatives seat vacated by Representative Robert E. Andrews.

Committees required to file reports in connection with the Special Primary Election on June 3, 2014, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and the Special General Election on November 4, 2014, shall file a 12-day Pre-Primary Report, 12-day Pre-General Report and a Post-General Report.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:**

### Principal Campaign Committees

All principal campaign committees of candidates who participate in the New Jersey Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on May 22, 2014; a 12-day Pre-General Report on October 23, 2014; and a Post-General Report on December 4, 2014. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on May 22, 2014. (See charts below for the closing date for each report.)

**Unauthorized Committees (PACs and Party Committees)**

Political committees filing on a quarterly basis in 2014 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New Jersey Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the New Jersey Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New Jersey Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

**Disclosure of Lobbyist Bundling Activity**

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,300 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v) and (b).

CALENDAR OF REPORTING DATES FOR NEW JERSEY SPECIAL ELECTION

| Report | Close of books [1] | Reg./cert. & overnight mailing deadline | Filing deadline |
|---|---|---|---|
| **COMMITTEES INVOLVED IN *ONLY* THE SPECIAL PRIMARY (06/03/14) MUST FILE:** | | | |
| Pre-Primary | 05/14/14 | 05/19/14 | 05/22/14 |
| July Quarterly | 06/30/14 | 07/15/14 | 07/15/14 |
| **COMMITTEES INVOLVED IN BOTH THE SPECIAL PRIMARY (06/03/14) AND SPECIAL GENERAL (11/04/14) MUST FILE:** | | | |
| Pre-Primary | 05/14/14 | 05/19/14 | 05/22/14 |
| July Quarterly | 06/30/14 | 07/15/14 | 07/15/14 |
| October Quarterly | 09/30/14 | 10/15/14 | 10/15/14 |
| Pre-General | 10/15/14 | 10/20/14 | 10/23/14 |
| Post-General | 11/24/14 | 12/04/14 | 12/04/14 |
| Year-End | 12/31/14 | 01/31/15 | [2] 01/31/15 |
| **COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (11/04/14) MUST FILE:** | | | |
| Pre-General | 10/15/14 | 10/20/14 | 10/23/14 |
| Post-General | 11/24/14 | 12/04/14 | 12/04/14 |
| Year-End | 12/31/14 | 01/31/15 | [2] 01/31/15 |

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

On behalf of the Commission.

Dated: March 13, 2014.

**Lee E. Goodman,**

*Chairman, Federal Election Commission.*

[FR Doc. 2014–05997 Filed 3–18–14; 8:45 am]

BILLING CODE 6715–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Thursday March 20, 2014 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220

**Shelley E. Garr,**

*Deputy Secretary.*

[FR Doc. 2014–05967 Filed 3–18–14; 8:45 am]

BILLING CODE 6715–01–M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

Scheduled to be published on March 14, 2014.

**DATE & TIME:** Tuesday, March 18, 2014 At 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor)

**STATUS:** This meeting will be open to the public.

**CHANGE IN THE MEETING:** The meeting will begin at 2:00 p.m. rather than 10:00 a.m.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2014–05969 Filed 3–18–14; 8:45 am]

BILLING CODE 6715–01–M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

Federal Register Citation of Previous Announcement—79 FR 13651 (March 11, 2014)

**DATE & TIME:** Tuesday March 11, 2014 at 11:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**CHANGE IN THE MEETING:** The March 11, 2014 meeting will be continued on March 18, 2014 and will start at 10:00 a.m.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer Telephone: (202) 694–1220

**Shawn Woodhead Werth,**

*Secretary and Clerk.*

[FR Doc. 2014–05966 Filed 3–18–14; 8:45 am]

BILLING CODE 6715–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at 202/523–5793 or *tradeanalysis@fmc.gov*.

*Agreement No.:* 012252.

*Title:* LGL/Farrell Space Charter and Cooperative Working Agreement.

*Parties:* Liberty Global Logistics LLC and Farrell Lines Incorporated.

*Filing Party:* Brooke F. Shapiro; Winston & Strawn LLP; 200 Park Avenue; New York, NY 10166.

*Synopsis:* The agreement authorizes LGL and Farrell Lines to discuss and possibly agree on the chartering of space to each other in the trade between ports on the U.S. East and Gulf Coasts on the one hand, and ports along the Arabian Sea, Red Sea, Persian Gulf and Middle East, and India and Pakistan, on the other hand.

By Order of the Federal Maritime Commission.

Dated: March 14, 2014.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2014–06061 Filed 3–18–14; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 2014.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Gapstow Capital Partners, L.P.; CJA Private Equity Financial Restructuring Master Fund I, L.P.; CJA Private Equity Financial Restructuring Fund I, Ltd., and its investors; CJA Private Equity Financial Restructuring GP I, Ltd.; Christopher J. Acito & Associates GP, LLC; Christopher J. Acito; and Jack T. Thompson;* all of New York, New York; and Timothy S.F. Jackson, Newtown, Connecticut; to acquire voting shares of Golden Pacific Bancorp, Sacramento, California, and thereby indirectly acquire voting shares of Golden Pacific Bank, N.A., Marysville, California.

Board of Governors of the Federal Reserve System, March 14, 2014.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2014–06055 Filed 3–18–14; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of January 28–29, 2014

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 28–29, 2014.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to 1/4 percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. Beginning in February, the Desk is directed to purchase longer-term Treasury securities at a pace of about $35 billion per month and to purchase agency mortgage-backed securities at a pace of about $30 billion per month. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency mortgage-backed securities transactions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, February 24, 2014.

**William B. English,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 2014–06073 Filed 3–18–14; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on January 28–29, 2014, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 2014.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Meridian Bancorp, Inc.,* Peabody, Massachusetts to become a bank holding company by acquiring 100 percent of the outstanding capital stock of East Boston Savings Bank, East Boston, Massachusetts, in connection with the conversion of Meridian Financial Services, Inc., East Boston, Massachusetts, from mutual to stock form.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *First Northwest Bancorp,* Port Angeles, Washington, to become a bank holding company upon the conversion of First Federal Savings and Loan Association of Port Angeles, Port Angeles, Washington, from a mutual to stock savings bank.

Board of Governors of the Federal Reserve System, March 13, 2014.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2014–05928 Filed 3–18–14; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Park Sterling Corporation,* Charlotte, North Carolina, to acquire 100 percent of the voting securities of Provident Community Bancshares, Inc., Rock Hill, South Carolina, and thereby indirectly acquire control of Provident Community Bank, National Association, Rock Hill, South Carolina.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *First Interstate BancSystem,* Billings, Montana, to merge with Mountain West Financial Corp., Helena, Montana, and thereby indirectly acquire Mountain West Bank, N.A., Helena, Montana.

2. *Security Financial Services Corporation,* Durand, Wisconsin, to merge with Bloomer Bancshares, Inc., Bloomer, Wisconsin, and thereby indirectly acquire Peoples State Bank of Bloomer, Bloomer, Wisconsin.

Board of Governors of the Federal Reserve System, March 14, 2014.

**Michael J. Lewandowski,**

*Assistant Secretary of the Board.*

[FR Doc. 2014–06054 Filed 3–18–14; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Patient Safety Organizations: Voluntary Relinquishment From Open Safety Foundation

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

**ACTION:** Notice of Delisting.

**SUMMARY:** The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from Open Safety Foundation of its status as a PSO, and has delisted the PSO accordingly.

**DATES:** The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on February 6, 2014.

**ADDRESSES:** Both directories can be accessed electronically at the following

HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when the PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from Open Safety Foundation, PSO number P0121, to voluntarily relinquish its status as a PSO. Accordingly, Open Safety Foundation was delisted effective at 12:00 Midnight ET (2400) on February 6, 2014.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: March 11, 2014.

**Richard Kronick,**

*Director.*

[FR Doc. 2014–05999 Filed 3–18–14; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Patient Safety Organizations: Voluntary Relinquishment From WiMED, Inc.

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

**ACTION:** Notice of Delisting.

**SUMMARY:** The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from WiMED, Inc. of its status as a PSO, and has delisted the PSO accordingly.

**DATES:** The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on February 6, 2014.

**ADDRESSES:** Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov*

**SUPPLEMENTARY INFORMATION:**

## Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from WiMED, Inc., PSO number P0064, to voluntarily relinquish its status as a PSO. Accordingly, WiMED, Inc. was delisted effective at 12:00 Midnight ET (2400) on February 6, 2014. WiMED, Inc. has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO. In addition, according to sections 3.108(c)(2)(ii) and 3.108(b)(3) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: March 11. 2014.

**Richard Kronick,**

*Director.*

[FR Doc. 2014–05998 Filed 3–18–14; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–14–0134]**

### 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**

Foreign Quarantine Regulations—Revision—(expiration date: July 31, 2015)—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC is submitting this revision to obtain authority to collect electronic information from importers/filers on specific types of animals and cargo over which CDC has authority, notably those found in 42 CFR part 71. This request is consistent with requirements of the Security and Accountability for Every (SAFE) Port Act that states that all agencies that require documentation for clearing or licensing the importation and exportation of cargo participate in the International Trade Data System (ITDS), and is also consistent with CDC authorities under Section 361 of the Public Health Service Act (PHSA)(42 U.S.C. 264).

This electronic data is specified by CDC using Partner Government Agency (PGA) Message Sets and is collected by Customs and Border Protection (CBP) from importers/filers when they submit the information needed through International Trade Data System ITDS and the Automated Commercial Environment (ITDS/ACE) to clear an import. CDC has developed a PGA message set for each regulated import specified in 42 CFR part 71, and each PGA Message Set includes only those data requirements necessary in order to determine whether or not a CDC-regulated import poses a risk to public health and that the importer has met CDC's regulatory requirements for entry. CDC is including the PGA Message Sets for review because there is no set form or format for the electronic submission of import related data to CBP and CDC. CDC is permitted access to the Automated Commercial Environment (ACE) data pursuant to 6 CFR 29.8(b) and 49 CFR 1520.11(b), which permit federal employees with a need to know to have access to this data.

CDC is maintaining its authority to collect hard copies of required documentation, as currently authorized by the Office of Management and Budget, because the use of ITDS/ACE will not be required for imports entering the United States until a later date. CDC will accept both hard copy and electronic filing of import-related documentation until the use of ACE is required for cargo entering the United States.

Through this revision, CDC is requesting a net increase in the estimated number of burden hours in the amount of 8,162. Of these additional hours, 7,862 pertain to requests for CDC Message Set data via ITDS/ACE, 167 hours pertain to required statements/documentation of products being rendered non-infectious, and 133 hours pertain to a revised estimate of the number of CDC form 75.37 ''NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement required from importers of dogs.

CDC also is providing wholly revised instructions for the Maritime Conveyance Cumulative Influenza/Influenza-Like Illness (ILI) Form and Maritime Conveyance Illness or Death Investigations form. No additional burden is requested for this change, because no increase in complexity of instructions or reporting information is requested.

Finally, CDC has removed burden totals for 42 CFR 71.52 Turtles, Tortoises and Terrapins (reduction of 3 hours from burden total); 42 CFR 71.55 Dead Bodies (reduction of 5 hours from burden total; and 42 CFR 71.56(a)(iii) and (c) Appeal—Appeal the denial of permit for importation of regulated animals; and Appeal for order of quarantine, destruction or re-export of regulated animals (reduction of 2 hours from burden total). CDC estimates that there are less than 10 occurrences a year when information is provided by a respondent pursuant to CDC requirements for importation. This results in a total reduction of 10 hours.

Respondents to this data collection include airline pilots, ships' captains, importers/filers, and travelers/general public. The nature of the response to CDC dictates which forms are completed by whom. There are no costs to respondents except for their time to complete the response.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name/CFR reference | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Maritime conveyance operators ..... | 71.21(a) Radio Report of death/illness—illness reports from ships (fillable PDF (individual case and cumulative report), phone, transcribed email). | 2,000 | 1 | 2/60 | 67 |
| Aircraft commander or operators ..... | 71.21(b) Death/Illness reports from aircrafts (verbal, no form). | 1,700 | 1 | 2/60 | 57 |
| Maritime conveyance operators ..... | 71.21(c) Gastrointestinal Illnesses reports 24 and 4 hours before arrival (MIDRS). | 17,000 | 1 | 3/60 | 850 |
| Maritime conveyance operators ..... | 71.21(c) Recordkeeping—Medical logs (no form, captains provide logs). | 17,000 | 1 | 3/60 | 850 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent | Form name/CFR reference | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Isolated or Quarantined individuals .. | 71.33(c) Report by persons in isolation or surveillance (verbal, no form). | 11 | 1 | 3/60 | 1 |
| Maritime conveyance operators ..... | 71.35 Report of death/illness during stay in port (verbal, no form). | 5 | 1 | 30/60 | 3 |
| Aircraft commander or operators ..... | Locator Form used in an outbreak of public health significance. | 2,700,000 | 1 | 5/60 | 225,000 |
| Aircraft commander or operators ..... | Locator Form used for reporting of an ill passenger(s). | 800 | 1 | 5/60 | 67 |
| Importer ..... | 71.51(b)(2) Dogs/cats: Certification of Confinement, Vaccination (CDC form 75.37). | 2,800 | 1 | 10/60 | 467 |
| Importer ..... | 71.51(b)(3) Dogs/cats: Record of sickness or deaths (no form, record review). | 20 | 1 | 15/60 | 5 |
| Importer/Filer ..... | CDC PGA Message Set for Importing Cats and Dogs. | 30,000 | 1 | 15/60 | 7,500 |
| Importer ..... | 71.56(a)(2) African Rodents—Request for exemption (no form, written request only). | 20 | 1 | 1 | 20 |
| Importer/Filer ..... | CDC PGA Message Set for Importing African Rodents. | 60 | 1 | 15/60 | 15 |
| Importer ..... | Statement or documentation of Non-infectiousness (Documented, no form; authority under 71.32(b)). | 2,000 | 1 | 5/60 | 167 |
| Importer/Filer ..... | CDC PGA Message Set for Importing African Rodent and All Family Viverridae Products. | 2,000 | 1 | 15/60 | 500 |
| | Total 1: PLF used in an outbreak of public health significance. | 2,775,416 | ..... | ..... | 235,569 |
| | Total 2: PLF used for reporting of an ill passenger(s). | 75,416 | ..... | ..... | 10,569 |

**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. 2014–05946 Filed 3–18–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–14–0739]**

### 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 the CDC Reports Clearance Officer at (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**

CDC Oral Health Management Information System (OMB No. 0920–0739, exp. 4/30/2014)—Revision—Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The CDC works with state health departments to improve the oral health of the nation. Targeted efforts include building and/or maintaining effective public health capacity for the implementation, evaluation, and dissemination of best practices in oral disease prevention and advancement of oral health. Through a cooperative agreement program (Program Announcement DP13–1307), CDC will provide funding to 21 states over a five-year period. New cooperative agreements went into effect in September 2013 and build on previous funded collaboration involving CDC and state programs.

CDC is currently approved to collect annual progress and activity reports from state-based oral health programs. An electronic reporting system has been in place since 2007 and was enhanced in 2008 to capture information about grantees' success stories and environmental scanning activities. The information collected in the management information system (MIS) improved CDC's ability to disseminate information about successful public health approaches that can be replicated or adapted for use in other states.

CDC plans to implement changes to the existing information collection. Through a Revision request, CDC will increase the number of awardees from 20 to 21; describe changes in the MIS platform and data elements that will align the monitoring and evaluation framework for oral health awardees with the framework used for a number of other programs in the National Center

for Chronic Disease Prevention and Health Promotion (NCCDPHP); and implement a revised method of estimating burden. For the three awardees funded at the Basic level, the estimated burden for the initial data entry needed to populate the system is 6 hours. Thereafter, the estimated burden for system maintenance and annual reporting is 3 hours. For the 18 awardees funded at the Enhanced level, the estimated burden for the initial data entry needed to populate the system is 13 hours. Thereafter, the estimated burden for system maintenance and annual reporting is 9 hours. The revised method provides a more accurate depiction of burden per respondent in comparison to the method presented in previous requests for OMB approval, which was based on a long-term average burden per response. A change in the frequency of reporting from semi-annual to annual occurred in 2013 and shall remain annual in the revised MIS. Even though reports will be submitted to CDC annually, states may enter updates into the MIS at any time.

The MIS will provide a central repository of information, such as work plans of the state oral health programs (their goals, objectives, performance milestones and indicators), as well as state oral health performance activities including programmatic and financial information. CDC will use the information collected to monitor awardee activities and to provide any technical assistance or follow-up support that may be needed.

OMB approval is requested for three years. Participation in the progress reporting system is a condition of award for funded state oral health programs.

All information will be collected electronically and there are no costs to respondents other than their time.

The total estimated annualized burden hours are 255.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Program Awardees Basic Level | Initial MIS Population | 1 | 1 | 6 |
| | Annual Progress Report | 3 | 1 | 3 |
| Program Awardees Enhanced Level | Initial MIS Population | 6 | 1 | 13 |
| | Annual Progress Report | 18 | 1 | 9 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–05945 Filed 3–18–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–14–13AGS]**

### 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, D.C. 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Prevention of Child Maltreatment through Policy Change—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The prevalence and consequences of child maltreatment (CM) make it a public health concern that requires early and effective prevention. Public policies can be critical in shaping every level of the social ecology, including individuals, families, and communities, and thus have the potential to play a key role in the prevention of CM. In order to protect children and youth and build an evidence-base of effective prevention strategies, evaluation of public policies are needed, including those policies currently being implemented. Policies related to family income (e.g., Temporary Assistance to Needy Families (TANF) eligibility and inroads to related services) were identified by CDC through the Division of Violence Prevention's Public Health Leadership Initiative policy analysis as those that are in need of rigorous evaluation.

CDC requests OMB approval for a period of 2 years in order to perform a data collection, which will provide data for a larger outcome evaluation that seeks to understand if county-administered policy strategies of the TANF program result in lower rates of CM and associated child welfare outcomes (e.g., time to adoption). The proposed data collection will include surveys and semi-structured interviews with state and county-level government employees and partners in Colorado to address three primary aims: (1) To understand how a state policy allowing counties to administer TANF programs with flexibility contributes to county-level adoption of integrated welfare and child welfare service models; (2) to develop and refine an Implementation Index, which will quantify the degree of integration between welfare and child welfare services; and (3) to inform the larger outcome evaluation, which examines whether TANF policies and program supports reduce rates of CM when they are delivered in an integrated welfare and child welfare service model.

Understanding how service integration between TANF and child welfare affects CM may be very important to improving CDC's ability to devise and implement effective population-based prevention strategies.

Approximately 190 Colorado state and county employees and partners form the sample population. Specifically, state and county-level employees working in welfare and/or child welfare agencies will be invited to complete a brief survey and an hour-long semi-structured interview. Additionally, individuals employed by Allied Staff (e.g., Housing, Supplemental Nutrition Assistance Program, Medicaid, Child Care) and Partners of Child Welfare and Colorado Works will also be invited to complete an hour-long semi-structured interview.

There are no costs to respondents other than their time.

The total estimated annual burden hours are 111.

ESTIMATED ANNUALIZED BURDEN

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs) |
|---|---|---|---|---|
| County Directors of Human Services | Survey of County TANF and Child Welfare Respondents. | 9 | 1 | 15/60 |
| | Interview of County Director of Human Services. | 9 | 1 | 1 |
| State Level Administrators | Survey of State Level Administrators | 4 | 1 | 15/60 |
| | Interview of State Level Administrator/Field Administrator. | 4 | 1 | 1 |
| Child Welfare/Colorado Works Leadership/Manager. | Survey of County TANF and Child Welfare Respondents. | 18 | 1 | 15/60 |
| | Interview of Child Welfare/Colorado Works Leadership/Manager. | 18 | 1 | 1 |
| Child Welfare Services and Colorado Works Case Manager, Caseworker, Technician, and Other Client-Serving Staff. | Survey of County TANF and Child Welfare Respondents. | 27 | 1 | 15/60 |
| | Interview of Child Welfare and Colorado Works Case Manager, Caseworker, Technician and Other Client-Serving Staff. | 27 | 1 | 1 |
| Allied Staff (e.g., Housing, Supplemental Nutrition Assistance Program, Medicaid, Child Care). | Interview of Allied Staff (e.g., Housing, Supplemental Nutrition Assistance Program, Medicaid, Child Care). | 18 | 1 | 1 |
| Partners of Child Welfare and Colorado Works. | Interview of Partners | 14 | 1 | 1 |
| County Data Manager | Survey of County TANF and Child Welfare Respondents. | 5 | 1 | 15/60 |
| | Interview of Data Managers | 5 | 1 | 1 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2014–05944 Filed 3–18–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Grants for Injury Control Research Centers (Panel 2), Funding Opportunity Announcement (FOA) CE14–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

**Time and Date**

8:30 a.m.–5:30 p.m. EST, April 15–16, 2014 (Closed)

*Place:* Georgian Terrace, 659 Peachtree Road NE., Room 5, Atlanta, Georgia 30308. This meeting will also be held by teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Grants for Injury Control Research Centers, Panel 2, FOA CE14–001''.

*Contact Person for More Information:* Donald Blackman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341, Telephone: (770)488–0641.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–05924 Filed 3–18–14; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Pilot Interventions to Promote the Health of People with Blood Disorders, FOA DD14–003, Initial Review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Times and Dates:* 9:00 a.m.–6:00 p.m., April 8, 2014 (Closed); 9:00 a.m.–6:00 p.m., April 9, 2014 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Pilot Interventions to Promote the Health of People with Blood Disorders, FOA DD14–003, initial review.''

*Contact Person For More Information:* M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–05926 Filed 3–18–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review.

The meeting announced below concerns Grants for Injury Control Research Centers (Panel 1), Funding Opportunity Announcement (FOA) CE14–001, Initial Review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 8:30 a.m.–5:30 p.m. EST, April 15–16, 2014 (Closed).

*Place:* Georgian Terrace, 659 Peachtree Road NE., Room 4, Atlanta, Georgia 30308. This meeting will also be held by teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters For Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Grants for Injury Control Research Centers, Panel 1, FOA CE14–001''.

*Contact Person For More Information:* Donald Blackman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F63, Atlanta, Georgia 30341, Telephone: (770) 488–0641.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2014–05925 Filed 3–18–14; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received within 30 days of this notice.

**ADDRESSES:** Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:**

*Information Collection Request Title:* Ryan White HIV/AIDS Program Part F Dental Services Report.

*OMB No.* 0915–0151—Revision.

*Abstract:* The Dental Reimbursement Program (DRP) and the Community Based Dental Partnership Program (CBDPP) under Part F of the Ryan White HIV/AIDS Program offer funding to accredited dental education programs to support the provision of oral health services for HIV-positive individuals. Institutions eligible for these Ryan White HIV/AIDS programs are accredited schools of dentistry, postdoctoral dental education programs, and dental hygiene programs. The DRP Application is the Dental Services Report (DSR) that schools and programs use to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV, or to report annual program data. Awards are authorized under section 2692(b) of the Public Health Service Act (42 U.S.C. 300ff–111(b)). The DSR collects data in four different areas: program information, patient demographics and services, funding, and training. It also requests applicants provide narrative descriptions of their services and facilities, as well as how they are working together with other local Ryan White HIV/AIDS Program-supported programs. The form used to collect this information is being revised to comply with the National HIV/AIDS Strategy directive to standardize data collection and reduce grantee reporting burden. The revised form implements data collection standards for race, ethnicity, and sex and eliminates some narrative description items; however, the average burden per response is anticipated to remain unchanged.

*Need and Proposed Use of the Information:* The primary purpose of collecting this information annually is to verify eligibility and determine reimbursement amounts for DRP applicants, as well as to document the program accomplishments of CBDPP grant recipients. This information also allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating patients with HIV, (2) the number and characteristics of clients who receive HIV/AIDS program supported oral health services, (3) the types and frequency of the provision of these

services, (4) the non-reimbursed costs of oral health care provided to patients with HIV, and (5) the scope of grant recipients' community-based collaborations and training of providers. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the DSR is critical for HRSA, state and local grantees, and individual providers to help assess the status of existing HIV-related health service delivery systems.

*Likely Respondents:* Accredited dental education programs, including schools of dentistry, post-doctoral dental education programs, and dental hygiene programs.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Type of respondent | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|---|
| Dental Services Report | DRP | 56 | 1 | 56 | 45 | 2,520 |
| | CBDPP | 12 | 1 | 12 | 35 | 420 |
| Total | | 68 | | 68 | | 2,940 |

Dated: March 12, 2014.

**Jackie Painter,**

*Deputy Director, Division of Policy and Information Coordination.*

[FR Doc. 2014–05974 Filed 3–18–14; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Information Collection; 60-day Comment Request: The National Diabetes Education Program (NDEP) Comprehensive Evaluation Plan

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collections projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) The approaches used 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: Joanne M. Gallivan, MS, RD, Director, National Diabetes Education Program, OCPL, NIDDK, 31 Center Drive, Room 9A06, Bethesda, MD, 20892; or call non-toll-free number 301–496–6110; or Email your request, including your address, to: *joanne_gallivan@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

**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:* The National Diabetes Education Program (NDEP) Comprehensive Evaluation Plan, 0925–0552, Expiration Date 10/31/2015, REVISION, National Institute of Diabetes and Digestive and Kidney Disease (NIDDK), National Institutes of Health (NIH).

*Need and Use of Information Collection:* The National Diabetes Education Program (NDEP) is a partnership of the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) and more than 200 public and private organizations. The long-term goal of the NDEP is to reduce the burden of diabetes and pre-diabetes in the United States, and its territories, by facilitating the adoption of proven strategies to prevent or delay the onset of diabetes and its complications. The NDEP objectives are to: (1) Increase awareness and knowledge of the seriousness of diabetes, its risk factors, and effective strategies for preventing complications associated with diabetes and preventing type 2 diabetes; (2) Increase the number of people who live well with diabetes and effectively manage their disease to prevent or delay complications and improve quality of life; (3) Decrease the number of Americans with undiagnosed diabetes; (4) Among people at risk for type 2 diabetes, increase the number who make and sustain effective lifestyle changes to prevent diabetes; (5) Facilitate efforts to improve diabetes-related health care and education, as well as systems for delivering care; (6) Reduce health disparities in populations disproportionately burdened by diabetes; and (7) Facilitate the incorporation of evidenced-based research findings into health care practices.

Multiple strategies have been devised to address the NDEP objectives. These have been described in the NDEP Strategic Plan and include: (1) Identify, and share with current and new partner organizations representing health care providers and community-based organizations representing people with diabetes and at risk for diabetes, model programs and resources that help them support their constituents and members

to develop and sustain a healthy lifestyle to prevent type 2 diabetes or effectively manage diabetes and improve their outcomes; (2) Identify, and share with current and new partner organizations, tools, resources and programs that help improve effectiveness in diabetes management and prevention interventions through clinical care engagements; (3) Identify, and share with current and new partner organizations, tools and resources for community organizations and community leaders seeking to improve health outcomes for people with diabetes and people at risk for type 2 diabetes where they live, work, play, and worship.

The NDEP evaluation will document the extent to which the NDEP program has been implemented and how successful it has been in meeting program objectives. The evaluation relies heavily on data gathered from existing national surveys such as National Health and Nutrition Examination Survey (NHANES), the National Health Interview Survey (NHIS), the Behavioral Risk Factor Surveillance System (BRFSS), among others for this information. This is a continued collection of additional primary data from NDEP target audiences on some key process and impact measures that are necessary to effectively evaluate the program. The audiences targeted by the National Diabetes Education Program include people at risk for diabetes, people with diabetes and their families, and the public.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 841.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent and instrument | Estimated number of respondents | Estimated number of responses per respondent | Average time per response (in hours) | Estimated total annual burden hours |
|---|---|---|---|---|
| Adults—Pretest surveys | 25 | 1 | 20/60 | 8 |
| Adults—Surveys | 2500 | 1 | 20/60 | 833 |

Dated: March 12, 2014.

**Ruby N. Akomeah,**

*Project Clearance Liaison, NIDDK, NIH.*

[FR Doc. 2014–06064 Filed 3–18–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute On Minority Health And Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Transdisciplinary Collaborative Centers for Health Disparities Research (U54).

*Date:* April 11, 2014.

*Time:* 02:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Maryline Laude-Sharp, Ph.D., Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

Dated: March 14, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06022 Filed 3–18–14; 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; Cognition and Cerebral Vascular Changes.

*Date:* March 26, 2014.

*Time:* 12:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Samuel C Edwards, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA OD13–117: Center for Evaluation and Coordination of Training and Research in Tobacco Regulatory Science.

*Date:* March 27, 2014.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda Downtown, Bethesda, MD 20814.

*Contact Person:* Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 14, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06026 Filed 3–18–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Blood Pressure Measurement Technologies for Low-Resource Settings in the U.S. and India (U01).

*Date:* April 14, 2014.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Steven J. Zullo, Scientific Review Officer, National Institutes of Health/NIBIB, 6707 Democracy Boulevard, Room 227, Bethesda, MD 20892, 301–451–4774, *steven.zullo@nih.gov*.

Dated: March 14, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06024 Filed 3–18–14; 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; RFA–HG–13–009: BD2K U54 Centers of Excellence Panel B

*Date:* April 10–11, 2014.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Allen Barlow Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–HG–13–009: BD2K U54 Centers of Excellence Panel C.

*Date:* April 10–11, 2014.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–HG–13–009: BD2K U54 Centers of Excellence Panel A

*Date:* April 10–11, 2014.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@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 13, 2014.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06028 Filed 3–18–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed 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 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 Mental Health Special Emphasis Panel Toxicological Evaluation of Novel Ligands Program.

*Date:* April 9, 2014.

*Time:* 10:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Implementation Of Collaborative Care.

*Date:* April 10, 2014.

*Time:* 9:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: March 13, 2014.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06027 Filed 3–18–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''NIAID Investigator Initiated Program Project Applications (P01)''.

*Date:* April 15–16, 2014.

*Time:* 9:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Room 3147, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Room # 3147, Bethesda, MD 20892, 301–435–1614, *james.snyder@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial (U01) and Planning Grants (R34).

*Date:* April 22, 2014.

*Time:* 10:30 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 14, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06025 Filed 3–18–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DEM Ancillary Applications.

*Date:* April 2, 2014.

*Time:* 4:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

*Date:* April 9, 2014.

*Time:* 12:30 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 14, 2014.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2014–06023 Filed 3–18–14; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2014–0003]**

### Homeland Security Science and Technology Advisory Committee (HSSTAC)

**AGENCY:** Science and Technology Directorate, DHS.

**ACTION:** Committee Management; notice of partially closed Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on April 7–8, 2014, in Washington, DC. The meeting will be partially closed to the public.

**DATES:** The HSSTAC will meet Monday, April 7, 2014, from 9:00 a.m. to 4:00 p.m. and Tuesday, April 8, 2014 from 9:00 a.m. to 4:00 p.m. The meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Department of Homeland Security (DHS), Science and Technology Directorate, 1120 Vermont Avenue NW. (Room 8 ABC), Washington, DC 20005.

All visitors must pre-register and present a government-issued ID in order to gain entry to the building. To register, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, below. Please provide your name, citizenship, organization (if any), title (if any), email address (if any), and telephone number.

For information on facilities or services for individuals with disabilities

or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT**, below.

Materials that are provided to committee members during the open portions of the meeting will also be provided to the public. Go to this url: *http://www.dhs.gov/st-hsstac* and click on the meeting dates to access the meeting briefings. To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the ''Supplementary Information'' below. Comments may be submitted orally, in writing, or both. If submitting in writing, please include the docket number (DHS–2014–0003) and submit via *one* of the following methods before April 4, 2014:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *mary.hanson@hq.dhs.gov.* Include the docket number in the subject line of the message.
- Fax: 202–254–6176.
- Mail: Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528–0205.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the HSSTAC, go to *http://www.regulations.gov* and type the docket number (DHS–2014–0003) into the ''SEARCH for: Rules, Comments, Adjudications or Supporting Documents:'' field in the middle of the Web site. A period is allotted for oral public comment on April 7 and 8, 2014, before any recommendations are formulated. Speakers are asked to pre-register and limit their comments to three minutes or less. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact the person listed below.

**FOR FURTHER INFORMATION CONTACT:** Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528–0205, Office: 202–254–5866, Fax: 202–254–5823, email: *mary.hanson@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2 (Pub. L. 92–463). The HSSTAC was established under 6 U.S.C. Section 450, and operates in accordance with the provisions of the FACA. The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

*Agenda:* The committee will convene in open session to meet with the Acting Under Secretary and other executives of the DHS Science and Technology Directorate (DHS S&T) to hear updates, discuss areas of concern, and receive taskings. Agenda items on April 7 focus solely on the interaction between DHS S&T and U.S. Immigration and Customs Enforcement (ICE). An official from ICE will first give an ICE overview, followed by a discussion among officials from ICE and DHS S&T about ICE's technology needs, how DHS S&T supports those needs, and how that support can be improved. A public comment period will follow the discussion. The committee will then receive its tasking from DHS S&T and begin to develop recommendations regarding how DHS S&T can better support ICE. The agenda on April 8 will include an update and discussion regarding the DHS S&T Cyber Security Division (CSD), followed by briefs about two DHS S&T projects: Apex Air Entry/Exit Re-Engineering (AEER), a project managed by the DHS S&T Homeland Security Advanced Research Projects Agency (HSARPA), which aims to biometrically verify that a foreign national who enters the U.S. is the same one who exits; and Project Responder, a project managed by the DHS S&T First Responder Group, which aims to systematically identify capability gaps for responding to catastrophic incidents. A public comment period will follow those briefs. The committee will meet in closed session from 1 p.m. to 4 p.m. on April 8, 2014, to receive a classified brief regarding emerging and disruptive technologies and technology trends (including the use of Intelligence, Surveillance, and Reconnaissance (ISR)) and to hear an update from the Task Force on Third Party Pre-Screening regarding its progress on helping TSA to expedite physical screening by exploring private sector options; the results of private sector testing and evaluation; and methodologies to determine eligibility for pre-screening. The task force update includes security sensitive information (SSI) and/or trade secrets and confidential/proprietary commercial information.

*Basis for Closure:* In accordance with Subsection (d) of Section 10 of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), it has been determined that certain portions of the meeting require closure as the disclosure of the information would not be in the public interest. This action is determined appropriate because disclosure of such information is likely to reveal matters that are authorized to be kept secret in the interests of national defense (5 U.S.C. 552b(c)(1)), or are specifically exempted from disclosure by statute (5 U.S.C. 552b(c)(3)), or that may disclose trade secrets and commercial information that is privileged or confidential (5 U.S.C. 552b(c)(4)). Consistent with 5 U.S.C. 552b(c)(1), (c)(3), and (c)(4), this segment of the meeting will be closed to avoid disclosure of information that is specifically exempt from disclosure by statute, regulation, or Executive Order. The classified briefing contains classified information protected under Executive Order 13526 ''Classified National Security Information'' and the update from the Task Force on Third Party Pre-Screening includes SSI protected pursuant to the SSI Federal Regulation (49 CFR part 1520) as well as business confidential and proprietary information.

Accordingly, this meeting will be partially closed to the public.

Dated: March 4, 2014.

**Daniel M. Gerstein,**

*Under Secretary for Science and Technology (Acting).*

[FR Doc. 2014–05995 Filed 3–18–14; 8:45 am]

**BILLING CODE 9910–9F–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R3–ES–2014–N033]; [FXES11130300000F3–145–FF03E00000]**

### Endangered and Threatened Wildlife and Plants; Permit Applications

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

**ACTION:** Notice of availability of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain

activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

**DATES:** We must receive any written comments on or before April 18, 2014.

**ADDRESSES:** Send written comments by U.S. mail to the Regional Director, Attn: Karl Tinsley, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Karl Tinsley, (612) 713–5330.

**SUPPLEMENTARY INFORMATION:**

## Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 et seq.) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR part 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES**.

## Permit Applications

*Permit Application Number: TE71718A*

*Applicant:* Steffen J. Bradley, Cincinnati, OH.

The applicant requests a permit renewal to take (capture and release) Indiana bats (*Myotis sodalis*) and gray bats (*Myotis grisescens*) within the States of Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin. Proposed activities are for the recovery of the species and enhancement of survival of the species in the wild.

*Permit Application Number: TE71827A*

*Applicant:* Benjamin T. Hale, Bloomington, IN.

The applicant requests a permit renewal to take (capture and release) Indiana bats, gray bats, Ozark big-eared bats (*Corynorhinus townsendii ingens*), and Virginia big-eared bats (*Corynorhinus townsendii virginianus*) within the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number: TE71680A*

*Applicant:* Megan Caylor, Indianapolis, IN.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats within the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, DC, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE07358A*

*Applicant:* Civil & Environmental Consultants, Inc., Indianapolis, IN.

The applicant requests a permit renewal to take (capture and release) Indiana bats and gray bats within the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE130900*

*Applicant:* EnviroScience, Inc., Stow, OH.

The applicant requests a permit renewal to take (capture and release) the following listed fish and mussel species throughout their range, within the States of Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin:

| Mussel Species | |
|---|---|
| Alabama lampmussel | *Lampsilis virescens.* |
| Alabama moccasinshell | *Medionidus acutissimus.* |
| Appalachian elktoe | *Alasmidonta raveneliana.* |
| Appalachian monkeyface | *Quadrula sparsa.* |
| Arkansas fatmucket | *Lampsilis powelli.* |
| Birdwing pearlymussel | *Lemiox rimosus.* |
| Chipola slabshell | *Elliptio chipolaensis.* |
| Clubshell | *Pleurobema clava.* |
| Coosa moccasinshell | *Medionidus parvulus.* |
| Cracking pearlymussel | *Hemistena lata.* |
| Cumberland bean | *Vilosa trabalis.* |
| Cumberland elktoe | *Alasmidonta atropupurea.* |
| Cumberland monkeyface | *Quadrula intermedia.* |
| Cumberland pigtoe | *Pleurobema gibberum.* |
| Cumberland combshell | *Epioblasma brevidens.* |
| Curtis pearlymussel | *Epioblasma florentina curtisii*, |
| Dromedary pearlymussel | *Dromus dromas.* |
| Fanshell | *Cyprogenia stegaria.* |
| Fat pocketbook | *Potamilus capax.* |
| Fat three-ridge | *Amblema neislerii.* |
| Fine-lined pocketbook | *Hamiota altilis.* |
| Finerayed pigtoe | *Fusconaia cuneolus.* |
| Fluted kidneyshell | *Ptychobrachus subtentum.* |
| Georgia pigtoe | *Pleurobema hanleyianum.* |
| Gulf moccasinshell | *Medionidus penicillatus.* |
| Higgins' eye pearlymussel | *Lampsilis higginsii.* |
| Littlewing pearlymussel | *Pegias fabula.* |

| | |
|---|---|
| Northern riffleshell | *Epioblasma torulosa rangiana.* |
| Ochlockonee moccasinshell | *Medionidus simpsonianus.* |
| Orange-footed pimpleback | *Plethobasus cooperianus.* |
| Ouachita Rock pocketbook | *Arkansia wheeleri.* |
| Oval pigtoe | *Pleurobema pyriforme.* |
| Ovate clubshell | *Pleurobema perovatum.* |
| Oyster musselshell | *Epioblasma capsaeformis.* |
| Pale lillput | *Toxolasma cylindrellus.* |
| Pink mucket pearlymussel | *Lampsilis abrupta.* |
| Purple bankclimber | *Elliptoideus sloatianus.* |
| Purple bean | *Vilosa purpurea.* |
| Purple cat's paw pearlymussel | *Epioblasma obliquata obliquata.* |
| Rayed bean | *Villosa fabalis.* |
| Rink pink | *Obovaria retusa.* |
| Rough pigtoe | *Pleurobema plenum.* |
| Rough rabbitsfoot | *Quadrula cylindrical strigillata.* |
| Shiny pigtoe | *Fusconaia cor.* |
| Shiny-rayed pocketbook | *Lampsilis subangulata.* |
| Slabside pearlymussel | *Lexingtonia dolabelloides.* |
| Snuffbox | *Epioblasma triquetra.* |
| Southern acornshell | *Epioblasma othcaloogensis.* |
| Southern clubshell | *Pleurobema decisum.* |
| Southern pigtoe | *Pleurobema georgianum.* |
| Tan riffleshell | *Epioblasma florentina walkeri.* |
| Triangular kidneyshell | *Ptychobrachus greeni.* |
| Upland combshell | *Epioblasma metrastriata.* |
| White cat's paw pearlymussel | *Epioblasma obliquata perobliqua.* |
| White wartyback | *Plethobasus cicatricosus.* |
| Winged mapleleaf | *Quadrula fragosa.* |
| **Fish Species** | |
| Shortnose sturgeon | *Acipenser brevirostrum.* |
| Blue shiner | *Cyprinella caerulea.* |
| Cherokee darter | *Etheostoma scotti.* |
| Etowah darter | *Etheostoma etowahae.* |
| Amber darter | *Percina antesella.* |
| Goldline darter | *Percina aurolineata.* |
| Conasauga logperch | *Percina jenkinsi.* |
| Snail darter | *Percina tanasi.* |

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE15027A*

*Applicant:* Stantec Consulting Services, Inc., Columbus, OH.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats and gray bats within the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Pennsylvania, Ohio, Oklahoma, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE94321A*

*Applicant:* Brian J. O'Neill, Deerfield, IL.

The applicant requests a permit renewal, with amendments, to take (capture and release) the following listed fish and mussel species throughout their range, within the States of Kentucky, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin:

| | |
|---|---|
| **Fish Species** | |
| Palezone shiner | *Notropis albizonatus* |
| Blackside dace | *Phoxinus cumberlandensis* |
| Relict darter | *Etheostoma chienense* |
| Tuxedo darter | *Etheostoma lemniscatun.* |
| Cumberland darter | *Etheostoma susanae.* |
| Scioto madtom | *Noturus trautmani.* |
| Pallid sturgeon | *Scaphirhynchus albus.* |
| **Mussel Species** | |
| Cumberland elktoe | *Alasmidonta atropupurea.* |
| Fanshell | *Cyprogenia stegaria.* |
| Dromedary pearlymussel | *Dromus dromas.* |
| Cumberland combshell | *Epioblasma brevidens.* |
| Oyster mussel | *Epioblasma capsaeformis.* |
| Tan riffleshell | *Epioblasma florentina walkeri.* |

| | |
|---|---|
| Purple cat's paw | *Epioblasma obliquata obliquata.* |
| White cat's paw | *Epioblasma obliquata perobliqua.* |
| Northern riffleshell | *Epioblasma torulosa rangiana.* |
| Tubercled blossom | *Epioblasma torulosa torulosa.* |
| Cracking pearlymussel | *Hemistena lata.* |
| Pink mucket pearlymussel | *Lampsilis abrupta.* |
| Higgins' eye pearlymussel | *Lampsilis higginsii.* |
| Scaleshell | *Leptodea leptodon.* |
| Ring pink | *Obovaria retusa.* |
| Littlewing pearlymussel | *Pegias fabula.* |
| White wartyback | *Plethobasus cicatricosus.* |
| Orangefoot pimpleback | *Plethobasus cooperianus.* |
| Clubshell | *Pleurobema clava.* |
| Rough pigtoe | *Pleurobema plenum.* |
| Fat pocketbook | *Potamilus capax.* |
| Winged mapleleaf | *Quadrula fragosa.* |
| Cumberland bean | *Villosa trabalis.* |
| Sheepnose | *Plethobasus cyphyus.* |
| Snuffbox | *Epioblasma triquetra.* |
| Spectaclecase | *Cumberlandia monodonta.* |
| Rabbitsfoot | *Quadrula cylindrica cylindrica.* |
| Rayed bean | *Villosa fabalis.* |

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE120259*

*Applicant:* Missouri Department of Conservation, Chillicothe, Missouri.

The applicant requests a permit amendment to take (capture and release, temporarily hold for propagation) pallid sturgeon in the Missouri River, including its tributaries, the Upper Mississippi River and Grand River within the State of Missouri, and the Kansas River within the State of Kansas. Activities will be conducted in conjunction with long-term population assessment and recovery work. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE89557A*

*Applicant:* URS Corporation, Cleveland, OH.

The applicant requests a permit amendment to take (capture and release) the following endangered mussel species within the States of Alabama, Arkansas, Georgia, Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Ohio, Oklahoma, Tennessee, and Wisconsin:

| | |
|---|---|
| Clubshell | *Pleurobema clava* |
| Sheepnose | *Plethobasus cyphyus* |
| Spectaclecase | *Cumberlandia monodonta* |
| Fanshell | *Cyprogenia stegaria* |
| Snuffbox | *Epioblasma triquetra* |
| Higgins' eye pearlymussel | *Lampsilis higginsii* |
| Fat pocketbook | *Potamilus capax* |
| Pink mucket pearlymussel | *Lampsilis abrupta* |
| Rabbitsfoot | *Quadrula cylindrica cylindrica* |
| Northern riffleshell | *Epioblasma torulosa rangiana* |
| Purple cat's paw | *Epioblasma obliquata obliquata* |
| White cat's paw | *Epioblasma obliquata perobliqua* |
| Orangefoot pimpleback | *Plethobasus cooperianus* |
| Speckled pocketbook | *Lampsilis streckeri* |
| Scaleshell | *Leptodea leptodon* |
| Neosho mucket | *Lampsilis rafinesqueana* |
| Oval pigtoe | *Pleurobema pyriforme* |
| Fat three-ridge | *Amblema neislerii* |
| Gulf moccasinshell | *Medionidus penicillatus* |
| Rayed bean | *Villosa fabalis* |

Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE43605A*

*Applicant:* Daniel R. Cox, Streator, IL.

The applicant requests a permit renewal, with amendments, to take (capture and release) Indiana bats and northern long-eared bats (*Myotis septentrionalis*) within the States of Arkansas, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE06845A*

*Applicant:* Bernardin, Lochmueller, and Associates, Inc., Evansville, IN.

The applicant requests a permit renewal, with amendment, to take (capture and release) Indiana bats and gray bats within the States of Georgia, Illinois, Indiana, Kentucky, and Ohio. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE10891A*

*Applicant:* Illinois State Museum Research and Collection Center, Dr. Everett Cashatt, P.I., Springfield, IL.

The applicant requests a permit renewal, with amendments, to take

Hine's emerald dragonfly (*Somatochlora hineana*) within the States of Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE38856A*

*Applicant:* Skelly & Loy, Inc., Harrisburg, PA.

The applicant requests a permit renewal, with amendments, to take (capture and release) the Indiana bat, gray bat, and Virginia big-eared bat (*Corynorhinus townsendii virginianus*), throughout the range of the species within the States of Arkansas, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE62311A*

*Applicant:* Mary B. Gilmore, Cincinnati, OH.

The applicant requests a permit to take (capture and release) Indiana bats throughout the range of the species within the States of Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE27915B*

*Applicant:* Wildlife Specialists, LLC., Wellsboro, PA.

The applicant requests a permit to take (capture and release) Indiana bats within the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia. Proposed activities are for the recovery and enhancement of survival of the species in the wild.

*Permit Application Number: TE71737A*

*Applicant:* Roger A. Klocek, Oak Brook, IL.

The applicant requests a permit renewal, with amendments, to take (capture and release) Higgins' eye pearlymussel, spectaclecase, sheepnose, and snuffbox mussels within the States of Illinois and Iowa. Proposed activities are for the recovery of the species and enhancement of survival of the species in the wild.

**Public Comments**

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. 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: March 3, 2014.

**Lynn M. Lewis,**

*Acting Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2014–06003 Filed 3–18–14; 8:45 a.m.]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLES956000–L14200000–BK0000]**

### Eastern States: Filing of Plat of Survey, Florida

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Dominica Van Koten. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The survey was requested by the U.S. Coast Guard.

The lands surveyed are:

**Tallahassee Meridian, Florida**

T. 40 S., R. 43 E.

The plat of survey represents the metes-and-bounds survey of a division line in former lot 18 being the boundary between lots 21 and 22 of Section 31 of Township 40 South, Range 43 East Martin County, in the State of Florida, and was accepted February 6, 2014.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 13, 2014.

**Dominica Van Koten,**

*Chief Cadastral Surveyor.*

[FR Doc. 2014–06021 Filed 3–18–14; 8:45 am]

**BILLING CODE 4310–GJ–P**

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]**

### Notice of Proposed Information Collection; Request for Comments for 1029–0091

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request continued approval for the collection of information associated with surface coal mining and reclamation operations on Indian Lands.

**DATES:** Comments on the proposed information collection must be received by May 19, 2014, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or by email at *jtrelease@osmre.gov*.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for approval. The collection is contained in 30 CFR part 750, Requirements for surface coal mining and reclamation operations on Indian Lands. OSM will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 750 is 1029–0091. Responses are required to obtain a benefit.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR part 750—Requirements for surface coal mining and reclamation operations on Indian Lands.

*OMB Control Number:* 1029–0091.

*Summary:* Operators who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to Section 710 of SMCRA.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Applicants for coal mining permits on Indian lands.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 1,018.

*Total Annual Non-Wage Burden:* $34,000.

Dated: March 13, 2014.

**Stephen M. Sheffield,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2014–06057 Filed 3–18–14; 8:45 am]

**BILLING CODE 4310–05–P**

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Meeting of the Advisory Committee; Meeting

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

**DATES:** The meeting will be held on April 25, 2014, from 8:30 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at Towers Watson, One Alliance Center, Suite 900, 3500 Lenox Road, Atlanta, GA 30326.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 703–414–2173.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Towers Watson, One Alliance Center, Suite 900, 3500 Lenox Road, Atlanta, GA 30326, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 11, 2014.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 2014–06072 Filed 3–18–14; 8:45 am]

**BILLING CODE 4830–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Call for nominations.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of Radiation Oncologist Physician (Brachytherapy) on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nominees should be a currently practicing radiation oncologist.

**DATES:** Nominations are due on or before May 19, 2014.

*Nomination Process:* Submit an electronic copy of resume or curriculum vitae, along with a cover letter and endorsement letter(s) from professional organizations, or others, to Ms. Sophie Holiday, *sophie.holiday@nrc.gov*. The cover letter should describe the nominee's current duties and responsibilities and express the nominee's interest in the position. Please ensure that the resume or curriculum vitae includes the following information, if applicable: education; certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

**FOR FURTHER INFORMATION CONTACT:** Ms. Sophie Holiday, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (301) 415–7865; *sophie.holiday@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** The ACMUI brachytherapy radiation oncologist provides advice on issues associated with radiation oncology and the clinical use of brachytherapy, including the use of permanently implanted microspheres. This advice includes providing input on NRC proposed rules and guidance, providing recommendations on the training and experience requirements for physicians specializing in this use, identifying medical events associated with this use, evaluating non-routine uses of byproduct material and emerging medical technologies, bringing key issues in the radiation oncology community to the attention of NRC staff, and other radiation oncology issues as they relate to radiation safety and NRC medical-use policy.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in letters or during the selection process.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) nuclear medicine physician; (b) nuclear cardiologist; (c) two radiation oncologists; (d) diagnostic radiologist; (e) therapy medical physicist; (f) nuclear medicine physicist; (g) nuclear pharmacist; (h) radiation safety officer; (i) patients' rights advocate; (i) Food and Drug Administration representative; and (j) Agreement State representative. For additional information about membership on the ACMUI, visit the ACMUI Membership Web page, *http://www.nrc.gov/aboutnrc/regulatory/advisory/acmui/membership.html*.

NRC is inviting nominations for the Radiation Oncologist physician position on the ACMUI. The term of the individual currently occupying this position will end on February 25, 2015. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members are expected to attend semi-annual meetings in Rockville, Maryland, and to participate in teleconferences, as needed. Members who are not Federal employees are compensated for their service. In addition, these members are reimbursed for travel and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

*Security Background Check:* The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland, this 13th day of March, 2014.

For the U.S. Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 2014–06049 Filed 3–18–14; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of certain collections of information under its regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's request and solicits public comment on the collections of information.

**DATES:** Comments should be submitted by April 18, 2014.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 1200 K St. NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The request is also available at *http://www.reginfo.gov*.

**FOR FURTHER INFORMATION CONTACT:** Donald F. McCabe, Attorney, Regulatory Affairs Group, Office of the General Counsel, or Catherine B. Klion, Assistant General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 1–800–877–8339 and request connection to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved and issued control numbers for the collections of information, described below, in PBGC's regulations relating to multiemployer plans (OMB approvals expire March 31, 2014, April 30, 2014, or July 31, 2014 (as specified below).[1]

The collections of information for which PBGC is requesting extension of OMB approval are as follows:

**1. Termination of Multiemployer Plans (29 CFR Part 4041A) (OMB Control Number 1212–0020) (Expires March 31, 2014)**

Section 4041A(f)(2) of ERISA authorizes PBGC to prescribe reporting requirements for and other ''rules and standards for the administration of'' terminated multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than $1,750 or of nonvested plan benefits unless authorized by PBGC.

The regulation requires the plan sponsor of a terminated plan to submit a notice of termination to PBGC. It also requires the plan sponsor of a mass-withdrawal-terminated plan that is closing out to give notices to participants regarding the election of alternative forms of benefit distribution and, if the plan is not closing out, to obtain PBGC approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits.[2]

PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make

[1] This notice does not cover Mergers and Transfers Between Multiemployer Plans (OMB Control Number 1212–0022, expires March 31, 2014) or Duties of Plan Sponsor Following Mass Withdrawal (OMB Control Number 1212–0032, expires May 31, 2014). Those information collections, which were included in PBGC's related ''60-day notice'' (78 FR 72128, Dec. 2, 2013), would be affected by PBGC's recent proposed rule on Multiemployer Plans; Valuation and Notice Requirements, 79 FR 4642 (Jan. 29, 2014). The proposed rule changes to those information collections are currently under review by OMB.

[2] Although the regulation would be affected by the recent proposed rule (see footnote 1), the proposal would not affect the information collection.

personal financial decisions. PBGC uses the information in an application for approval to pay lump sums greater than $1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

PBGC estimates that plan sponsors each year (1) submit notices of termination for 10 plans, (2) distribute election notices to participants in 5 of those plans, and (3) submit requests to pay benefits or benefit forms not otherwise permitted for one of those plans. The estimated annual burden of the collection of information is 19.2 hours and $18,436.50.

**2. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023) (Expires March 31, 2014)**

Sections 4203(f) and 4208(e)(3) of ERISA allow PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to PBGC about the rules, the plan, and the industry in which the plan operates. PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

PBGC estimates that at most one plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is one hour and $5,600.

**3. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021) (Expires March 31, 2014)**

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from PBGC. Plans and PBGC use the information to determine whether employers qualify for variances.

PBGC estimates that each year, 11 employers submit, and 11 plans respond to, variance requests under the regulation, and one employer submits a variance request to PBGC. The estimated annual burden of the collection of information is 2.75 hours and $5,513.

**4. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044) (Expires March 31, 2014)**

Section 4207 of ERISA allows PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, 100 employers submit, and 100 plans respond to, applications for abatement of complete withdrawal liability, and one plan sponsor requests approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 25.5 hours and $35,000.

**5. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039) (Expires July 31, 2014)**

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, 1,000 employers submit, and 1,000 plans respond to, applications for abatement of partial withdrawal liability and one plan sponsor requests approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 250.5 hours and $350,000.

**6. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035) (Expires April 30, 2014)**

Section 4211(c)(5)(A) of ERISA requires PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to PBGC by a plan seeking such approval. PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and PBGC.

PBGC estimates that 10 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 20 hours and $0.

**7. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034) (Expires April 30, 2014)**

Section 4219(c)(1)(D) of ERISA requires that PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' ERISA section 4209(c) deals with an employer's liability for de minimis amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to PBGC so that it can monitor the plan, and they help PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

PBGC estimates that there are six mass withdrawals and three substantial

withdrawals per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to PBGC that assessments have been made. (For a mass withdrawal, there are two assessments and two certifications that deal with two different types of liability. For a substantial withdrawal, there is one assessment and one certification (combined with the withdrawal notice to PBGC).) The estimated annual burden of the collection of information is 18.43 hours and $50,744.95.

**8. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031) (Expires March 31, 2014)**

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, PBGC either approves or fails to disapprove the rule.

The regulation provides rules for requesting PBGC's approval of an amendment. PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

PBGC estimates that at most one plan sponsor submits an approval request per year under this regulation. The estimated annual burden of the collection of information is 0.5 hours and $0.

**9. Notice of Insolvency (29 CFR Part 4245) (OMB Control Number 1212–0033) (Expires April 30, 2014)**

If the plan sponsor of a plan in reorganization under ERISA section 4241 determines that the plan may become insolvent, ERISA section 4245(e) requires the plan sponsor to give a ''notice of insolvency'' to PBGC, contributing employers, and plan participants and their unions in accordance with PBGC rules.

For each insolvency year under ERISA section 4245(b)(4), ERISA section 4245(e) also requires the plan sponsor to give a ''notice of insolvency benefit level'' to the same parties.

This regulation establishes the procedure for giving these notices. PBGC uses the information submitted to estimate cash needs for financial assistance to troubled plans. Employers and unions use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

PBGC estimates that at most one plan sponsor of an ongoing plan gives notices each year under this regulation. The estimated annual burden of the collection of information is one hour and $2,734.

Issued in Washington, DC, this 13th day of March, 2014.

**Judith R. Starr,**

*General Counsel, Pension Benefit Guaranty Corporation.*

[FR Doc. 2014–06051 Filed 3–18–14; 8:45 am]

BILLING CODE 7709–02–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71720; File No. SR–FINRA–2014–011]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6432

March 13, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 6, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA) 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 FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA Rule 6432 to require members to certify that they have and will not accept any payment or other consideration for market making from issuers and related persons.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

* * * * *

6430. OTC Equity Quotation Requirements

* * * * *

6432. Compliance With the Information Requirements of SEA Rule 15c2–11

(a) No Change.

(b) The information to be filed shall contain*:*

*(1) O*[o]ne copy of all information required to be maintained under SEA Rule 15c2–11(a)(1), (2), (3), (4), or (5), including any information that may be required by future amendments thereto. Members are not required to file with FINRA copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system; provided, however, that the filing with FINRA shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEA Rule 15c2–11(a), including the type of report, report date and any other information as may be requested by FINRA.

*(2)* [In addition, this filing shall identify]*Identification of* the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-exchange-listed security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of SEA Rule 15c2–11 with which the member is demonstrating compliance.

*(3)* [Additionally, i]*If* a member is initiating or resuming quotation of a non-exchange-listed security with a priced entry, [the member's filing must

specify] the basis upon which that priced entry was determined and the factors considered in making that determination.

*(4) A certification that neither the member nor persons associated with the member have accepted or will accept any payment or other consideration prohibited by FINRA Rule 5250.*

(c) through (e) No Change.

• • • Supplementary Material:

01. No Change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

FINRA Rule 5250 (Payments for Market Making) prohibits members from receiving any payment or other consideration by issuers or issuers' affiliates and promoters, directly or indirectly, for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The Rule is intended, among other things, to prohibit members from receiving consideration from an issuer for quoting or making a market in the issuer's securities and to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities.[5] The prohibition against receiving payments for market making activities includes within its scope payments for submitting an application in connection with market making, including the filing of a Form 211.

FINRA Rule 6432 sets forth the standards applicable to member firms for demonstrating compliance with Rule 15c2–11 under the Act.[6] Pursuant to the Rule 6432, members must submit to FINRA a Form 211 which, among other things, requires the member to provide information regarding the issuer sought to be quoted. FINRA is proposing to amend Rule 6432 to require members to, as part of the Form 211 process, certify to FINRA that neither the member nor its associated persons have or will accept any payment or other consideration for posting a quotation or market making as prohibited under Rule 5250, including in connection with the filing of the Form 211.

FINRA intends to include the new certification as part of the current Form 211, which is required to be completed by members prior to initiating or resuming quotations in a non-exchange-listed security[7] in any quotation medium.[8] Thus, only members submitting a Form 211 going forward will be required to certify that no payments for market making prohibited by Rule 5250 have or will be accepted. FINRA believes that this approach seamlessly implements this new requirement without imposing any additional burden on members, since both the submission of the Form 211 as well as the substantive prohibition on receipt of Rule 5250 payments already apply to members.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be announced in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,[10] which requires, among other things, that FINRA's rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

FINRA believes that the proposed rule change meets these requirements in that it maintains the protections that Rule 5250 was designed to provide by helping to ensure that a member makes an independent decision (rather than one influenced by payments to a member from an issuer) in determining to make a market in the issuer's security in advance of FINRA permitting a member to initiate or resume quotations. By including a requirement that members certify to their compliance of this rule on the Form 211, FINRA is reinforcing the importance of member compliance with Rule 5250. The proposed rule change also facilitates FINRA's ability to identify potential red flags in connection with members' planned quotation activities by explicitly including the Rule 5250 certification as part of the review process required of members seeking to initiate quotations in securities that require Form 211 clearance.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would require that members submitting a Form 211 certify to FINRA that neither the member nor persons associated with the

[5] As stated in prior filings and notices, FINRA believes a market maker should have considerable latitude and freedom to make or terminate market making activities in an issuer's securities. The decision by a member to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the member's expectations toward the market, its current inventory position, and exposure to risk and competition. The decision, however, should not be influenced by payments to the member by the issuer. FINRA's policy concerning payments for market making was first set forth in *Notice to Members* 75–16 and then codified as NASD Rule 2460 (now FINRA Rule 5250) in 1997. *See Notice to Members* 75–16 (February 1975) and Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (''Order Approving File No. SR–NASD–97–46'').

[6] Rule 15c2–11 under the Act prescribes information review and maintenance requirements for broker-dealers that publish quotations in a quotation medium for certain over-the-counter equity securities. Specifically, Rule 15c2–11 prohibits a broker-dealer from publishing, or submitting for publication, a quotation for a covered OTC equity security unless it has obtained and reviewed current information about the issuer whose security is the subject of the quotation that the broker-dealer believes is accurate and obtained from a reliable source. *See* 17 CFR 240.15c2–11.

[7] Rule 6432(e) defined ''non-exchange-listed security'' as any equity security, other than a restricted equity security, that is not traded on any national securities exchange. Rule 6420(k) defines ''restricted equity security'' as any equity security that meets the definition of ''restricted security'' as contained in Rule 144(a)(3) under the Securities Act.

[8] Rule 6420(j) defines ''quotation medium'' as any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any OTC Equity Security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78*o*–3(b)(11).

member have or will accept any payment or other consideration prohibited by FINRA Rule 5250, which generally prohibits a member from receiving payments, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith. Thus, the proposed rule change helps ensure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities. Because the certification relates to compliance with a rule the member is already subject to and will be included as part of the existing Form 211, FINRA does not believe there is any substantial additional burden on competition imposed by the proposal. FINRA recognizes that the certifying firm may choose to require sub-certifications within the firm, but FINRA does not view this as required by the rule or involving significant costs relative to the compliance benefits of the certification. Further, any member submitting a new Form 211 will be required to comply with the new certification, which does not impose any disparate treatment among such members that might result in a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f)(1) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–011 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2014–011 and should be submitted on or before April 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–05986 Filed 3–18–14; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71718; File No. SR–NYSE–2014–10]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Specify Pricing Applicable to Executions of Mid-Point Passive Liquidity Orders Against Retail Orders Within the Retail Liquidity Program, Effective March 1, 2014

March 13, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 28, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Price List to specify pricing applicable to executions of Mid-Point Passive Liquidity (''MPL'') Orders against Retail Orders within the Retail Liquidity Program. The Exchange proposes to implement the fee change effective March 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Price List to specify pricing applicable to executions of MPL Orders against Retail Orders within the Retail Liquidity Program. The Exchange proposes to implement the fee change effective March 1, 2014.

The Exchange recently introduced a new order type called an MPL Order, which is an undisplayed limit order that automatically executes at the mid-point of the protected best bid or offer (''PBBO'').[3] The Exchange also amended NYSE Rule 107C to specify that MPL Orders could interact with incoming, contra-side Retail Orders submitted by a Retail Member Organization (''RMO'') in the Retail Liquidity Program.[4]

The Exchange proposes that the pricing for a Retail Order that executes against an MPL Order would be the same as the current pricing for a Retail Order that executes against a Retail Price Improvement Order (''RPI'') submitted by a Retail Liquidity Provider (''RLP'') or non-RLP.[5] Specifically, the Retail Order would receive a credit of $0.0005 per share. The Exchange also proposes that the contra-side MPL Order would be billed according to the standard pricing that would otherwise apply to the MPL Order (*e.g.,* a credit of $0.0015 per share, not the pricing under the Retail Liquidity Program section of the Price List).

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that a $0.0005 per share credit for a Retail Order that executes against an MPL Order is reasonable because it is the same rate that currently applies to a Retail Order that executes against an RPI. In this regard, both MPL Orders and RPIs offer the potential for price improvement for a Retail Order. This is further reasonable because it would create an added financial incentive for RMOs to bring additional retail order flow to a public market, which could result in additional price improvement for retail investors.

The Exchange also believes that it is reasonable for an MPL Order that executes against a Retail Order to be billed according to standard pricing that would otherwise apply to the MPL Order (*e.g.,* a credit of $0.0015 per share, not the pricing under the Retail Liquidity Program section of the Price List). Specifically, an MPL Order would be eligible to execute against Retail Orders, but without being so designated by the submitting member or member organization. Accordingly, the standard MPL Order rate (*e.g.,* $0.0015) would otherwise apply to the MPL Order absent its interaction with the Retail Order.

The pricing proposed herein is equitable and, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements.

The proposed pricing could result in an RPI receiving a rate (*i.e.,* no charge or a fee of $0.0003 per share) that is inferior to the rate received by an MPL Order (*e.g.,* a credit of $0.0015 per share), even when both execute against a Retail Order. The Exchange believes that this is equitable and not unfairly discriminatory because RPIs would only execute against Retail Orders, whereas MPL Orders could execute against Retail Orders or other marketable interest on the Exchange, including non-retail liquidity.[8] In this regard, and as previously recognized by the Securities and Exchange Commission (''Commission''), ''markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.'' [9] The Exchange has sought to balance this view in setting the pricing of RPIs compared to MPL Orders, recognizing that the ability to limit interaction only to Retail Orders could be a potential benefit applicable only to RPIs. This is also equitable and not unfairly discriminatory because the use of RPIs by RLPs and non-RLPs is voluntary. Members and member organizations that perceive that the potential advantages of interacting with Retail Orders outweigh the potential costs (*i.e.,* providing price improvement and potential inferior pricing as compared to MPL Orders) may choose to utilize RPIs, but those that do not are free to forgo their use.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[10] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the

[3] *See* Securities Exchange Act Release No. 71330 (January 16, 2014), 79 FR 3895 (January 23, 2014) (SR–NYSE–2013–71). *See also* NYSE Rule 13.

[4] *See* NYSE Rule 107C. Retail Order is defined in Rule 107C(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. RMO is defined in Rule 107C(a)(2) as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

[5] RPI is defined in Rule 107C(a)(4) and consists of non-displayed interest in NYSE-listed securities that is priced better than the best protected bid (''PBB'') or best protected offer (''PBO''), as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. RLP is defined in Rule 107C(a)(1) as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 107C.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] This is also similar to the manner in which the NASDAQ Stock Market, LLC (''NASDAQ'') applies pricing for its ''Retail Price Improvement Program.'' *See* NASDAQ Rule 7018(g).

[9] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, 40679–80 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84). *See also* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''Concept Release'') (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[10] 15 U.S.C. 78f(b)(8).

Exchange believes that the proposed change would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. In this regard, the Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would encourage competition and result in better prices for retail investors.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–10 and should be submitted on or before April 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–05984 Filed 3–18–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71721; File Nos. SR–NYSE–2014–04; SR–NYSEMKT–2014–10; SR–NYSEArca-2014–08]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Corporate Action in Which Its Indirect Parent, NYSE Euronext Holdings LLC, Will Become a Wholly-Owned Subsidiary of IntercontinentalExchange, Inc.

March 13, 2014.

**I. Introduction**

On January 17, 2014, each of New York Stock Exchange LLC (''Exchange''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'' and, with the Exchange and NYSE MKT, the ''NYSE Exchanges''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes in connection with the contribution by IntercontinentalExchange Group, Inc., a Delaware corporation (''ICE Group''), of its 100% membership interest in NYSE Euronext Holdings LLC, a Delaware limited liability company (''NYX Holdings''), which is an indirect owner of a 100% interest in the NYSE Exchanges, to IntercontinentalExchange, Inc. (''ICE Inc.''), another wholly-owned subsidiary of ICE Group, (the ''Transfer''). The proposed rule changes were published for comment in the **Federal Register** on January 30, 2014.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 71393 (January 24, 2014), 79 FR 4996 (January 30, 2014) (SR–NYSE–2014–04) (''Notice''); 71395 (January 24, 2014), 79 FR 5003 (January 30, 2014)(SR–NYSEMKT–2014–10); 71394 (January 24, 2014), 79

Continued

The Commission did not receive any comment letters on the proposal.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,[6] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act[7] also requires that the rules of the exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## II. Discussion

The Exchange, NYSE MKT and NYSE Arca have submitted their proposed rule changes in connection with the transfer by ICE Group of all membership interests in NYX Holdings to ICE Inc.

NYX Holdings owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (''NYSE Group''), which in turn directly or indirectly owns (1) 100% of the equity interest of the NYSE Exchanges and, (2) 100% of the equity interest of NYSE Market (DE), Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca L.L.C., NYSE Arca Equities, Inc. (''NYSE Arca Equities'') and NYSE Amex Options LLC (''NYSE Amex Options'') (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca L.L.C., NYSE Arca Equities, NYSE Amex Options and any similar U.S. regulated entity acquired, owned or created after the date hereof, the ''U.S. Regulated Subsidiaries'' and each, a ''U.S. Regulated Subsidiary'').

ICE Inc. is a wholly-owned subsidiary of ICE Group, a public company that is listed on the Exchange. NYSE Holdings is also a direct wholly-owned subsidiary of ICE Group. Following the Transfer, ICE Inc. will remain a direct wholly-owned subsidiary of ICE Group.

As a result of the Transfer, ICE Group will contribute the membership interests in NYX Holdings to ICE Inc., at which point NYX Holdings will become a wholly-owned subsidiary of ICE Inc., and the U.S. Regulated Subsidiaries owned by NYX Holdings will become indirect wholly-owned subsidiaries of ICE Inc. ICE Group will continue as the ultimate parent entity of NYX Holdings through ICE Inc. The proposed rule changes are necessary to effectuate the consummation of the Transfer and will not be operative until the date of the consummation of the Transfer (the ''Closing Date''). The proposed rule changes and exhibits thereto contain modifications to the corporate governance documents of ICE Inc., NYX Holdings and ICE Group[8] that reflect the current structure of the Transfer.[9]

Following the Transfer, ICE Group will continue to hold all of the equity interests in ICE Inc., and ICE Inc. will hold all the membership interests in NYX Holdings. NYX Holdings will continue to hold (1) 100% of the equity interests of NYSE Group (which, in turn, would continue to directly or indirectly hold 100% of the equity interests of the U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (''Euronext'') (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom).

According to the NYSE Exchanges, the Transfer is part of the process pursuant to which ICE Group will prepare for the previously announced sale of the continental European cash equity platforms and the derivatives trading on them (the ''*Euronext Sale*'') currently owned by Euronext. According to the NYSE Exchanges, the Transfer also will facilitate the transitioning of the derivatives businesses of another current subsidiary of Euronext, Liffe Administration and Management, to ICE Futures Europe, a subsidiary of ICE Inc., and will enable ICE Inc. to continue in compliance with certain debt covenants after the Euronext Sale.

The NYSE Exchanges represent that the Transfer will not affect the operation of the U.S. Regulated Subsidiaries. Other than as described herein, the NYSE Exchanges also represent that ICE Inc. will not make any changes to the regulated activities of the U.S. Regulated Subsidiaries in connection with the Transfer. If ICE Inc. determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission.

### *A. ICE Inc.*

Following the Transfer, ICE Inc. will hold all of the equity interests in NYX Holdings, which in turn, directly or indirectly holds 100 percent of the equity interests of the U.S. Regulated Subsidiaries. Section 19(b) of the Act

FR 4989 (January 30, 2014) (SR–NYSEArca-2014–08).

[5] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] *Id.*

[8] The NYSE Exchanges propose to add to the Amended and Restated Certificate of Incorporation of ICE Group (''ICE Group Certificate'') and the Second Amended and Restated Bylaws of ICE Group (''ICE Group Bylaws'') that directors of ICE Group must consider ICE Inc. and NYX Holdings when taking certain actions. Specifically, the provisions in the ICE Group Certificate establishing the standard for each director's approval of ownership or voting rights in excess of the limitations in the ICE Group Certificate do not currently require a director to consider whether such approval would impair the ability of ICE Inc. and NYX Holdings to comply with the Exchange Act and the rules and regulations thereunder. *See* proposed ICE Group Bylaws, Section 3.15(g)(amending the definition of U.S. Regulated Subsidiary cross-referenced in the ICE Group Certificate to include NYX Holdings and ICE Inc.). Also, the provisions in the ICE Group Bylaws establishing the standards for the board's approval of any action by ICE Group does not currently require a director to take into consideration the effect that such action would have on the ability of ICE Inc. and NYX Holdings (a) to engage in conduct that fosters and does not interfere with the ability of each such entity to prevent fraudulent and manipulative acts and practices in the securities markets; (b) to promote just and equitable principles of trade in the securities markets; (c) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (d) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (e) in general, to protect investors and the public interest. *See* proposed ICE Group Bylaws, Section 3.14(a)(3). The ICE Group Bylaws would be amended to add references to ICE Inc. and NYX Holdings in each such provision.

[9] The NYSE Exchanges propose to amend the Third Amended and Restated Limited Liability Company Agreement of NYX Holdings (''NYX Holdings Operating Agreement'') to reflect that ICE Inc. will be the sole member of the LLC as a result of ICE Group's transfer of the membership interest in NYX Holdings to ICE Inc. and make additional nonsubstantive conforming changes. The NYX Holdings board adopted the resolutions in order to permit ICE Group to transfer its membership interest in NYX Holdings to ICE Inc. and to amend the NYX Holdings Operating Agreement to reflect the change of ownership in Exhibit 5D–1 to the Notice. The Commission notes that, if the Transfer is not consummated, the proposed rule changes will not become effective.

and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although ICE Inc. is not an SRO, certain provisions of its proposed Fifth Amended and Restated Certificate of Incorporation (''ICE Inc. Certificate'') and proposed Second Amended and Restated Bylaws (''ICE Inc. Bylaws'', and together with the ICE Inc. Certificate, ''the ICE Inc. Articles''), along with other corporate documents, are rules of an exchange [10] if they are stated policies, practices, or interpretations, as defined in Rule 19b–4 under the Act, of the exchange, and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the NYSE Exchanges have filed the proposed ICE Inc. Articles, along with other corporate documents, with the Commission.

Voting and Ownership Limitations

The NYSE Exchanges propose that, effective as of the completion of the Transfer, the ICE Inc. Certificate would contain voting and ownership restrictions that are substantially identical to those currently in the ICE Group Certificate and the NYX Holdings Operating Agreement previously approved by the Commission.[11] These would restrict any person, either alone or together with its related persons, from having voting control over ICE Inc. shares entitling the holder thereof to cause more than 10% of the votes entitled to be cast on any matter, or beneficially owning ICE Inc. shares representing more than 20% of the outstanding votes that may be cast on any matter.[12] These limitations would apply in the event that ICE Group does not own all of the issued and outstanding stock in ICE Inc.[13] and only for so long as ICE Inc. directly or indirectly controls any U.S. Regulated Subsidiary or any European Market Subsidiary.[14]

The ICE Inc. board of directors may waive the voting and ownership restrictions if it makes certain determinations and expressly resolves to permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Act and filed with, and approved by, each European Regulator having appropriate jurisdiction and authority.[15]

In addition, for so long as ICE Inc. directly or indirectly controls the Exchange, NYSE Market (DE), Inc., NYSE MKT, NYSE Arca, NYSE Arca Equities Inc. or any facility of NYSE Arca or NYSE MKT, the ICE Inc. board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member of NYSE or NYSE MKT, an ETP Holder of NYSE Arca Equities,[16] or an OTP Holder or an OTP Firm of NYSE Arca.[17] Further, the ICE Inc. board of directors also cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) (a ''U.S. Disqualified Person'') or has been determined by a European Regulator to be in violation of laws or regulations adopted in accordance with the European Directive on Markets in Financial Instruments applicable to any European Market Subsidiary requiring such person to act fairly, honestly and professionally (a ''European Disqualified Person'').[18]

The Commission finds the ownership and voting restrictions in the proposed ICE Inc. Articles are consistent with the Act.

*B. NYX Holdings Resolutions*

In order to allow ICE Inc. to wholly own and vote all of NYX Holdings' membership interests upon consummation of the Transfer, ICE Inc. delivered a written notice to the board of directors of NYX Holdings pursuant to the procedures set forth in the NYX Holdings Operating Agreement requesting approval of its ownership and voting NYX Holdings membership interests in excess of the NYX Holdings voting restriction and NYX Holdings ownership restriction.[19] The board of directors of NYX Holdings must resolve to expressly permit ownership or voting in excess of the NYX Holdings voting restriction limitation and NYX Holdings ownership restriction. Such resolution of the NYX Holdings board of directors must be filed with and approved by the Commission under Section 19(b) of the Act, and become effective thereunder. Further, the board of directors may not approve any voting or ownership in excess of the limitations unless it determines that such ownership or exercise of voting rights (i) will not impair the ability of the U.S. Regulated Subsidiaries, NYX Holdings, and NYSE Group to discharge their respective responsibilities under the Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, NYX Holdings, or Euronext to discharge their respective responsibilities under the European Exchange Regulations, (iii) is otherwise in the best interests of NYX Holdings, its members, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries, and (iv) will not impair the Commission's ability to enforce the Act or the European Regulators' ability to enforce the European Exchange Regulations.[20] For so long as NYX Holdings directly or indirectly controls the Exchange or NYSE Market, NYSE Arca, NYSE Arca Equities, any facility of NYSE Arca, or NYSE MKT, the NYX Holdings board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a member of the Exchange or NYSE MKT, or an ETP Holder, an OTP Holder or an OTP Firm.[21] Further, the NYX Holdings board of directors cannot waive the voting and ownership limits above the 20% threshold if such person or its related persons is a U.S. Disqualified Person or a European Disqualified Person.[22]

The board of directors of NYX Holdings adopted by written consent resolutions to permit ICE Inc., either alone or with its related persons, to

[10] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27). If ICE Inc. decides to change the ICE Inc. Articles, ICE Inc. must submit such change to the board of directors of the U.S. Regulated Subsidiaries, and if any or all of such board of directors shall determine that such amendment must be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act and the rules thereunder, such change shall not be effective until filed with or filed with and approved by the Commission, as applicable. *See* proposed ICE Inc. Certificate, Article X; proposed ICE Inc. Bylaws, Section 11.3.

[11] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2010) (order approving proposed combination of NYSE Euronext and IntercontinentalExchange Group Inc.).

[12] *See* proposed ICE Inc. Certificate, Article V, Sections A.1. and B.1.

[13] *See* proposed ICE Inc. Certificate, Article V.

[14] *See* proposed ICE Inc. Certificate, Article V, Section A.1. and B.1.

[15] *See* proposed ICE Inc. Certificate, Article V, Section A.2. and B.2.

[16] ''ETP Holder'' is defined in NYSE Arca Equities Rule 1.1(m). ''OTP Holder'' and ''OTP Firm'' are defined, respectively, in NYSE Arca Rule 1.1(q) and 1.1(r).

[17] *See* proposed ICE Inc. Certificate, Article V, Section A.3(c) and B.3(d)–(f).

[18] *See* ICE Inc. Certificate, Article V Sections A.3(c)(i), A.3(d)(i) and B.3(c)(i) and (ii).

[19] Prior to permitting any person to exceed the ownership limitation and voting limitation, such person must deliver notice of such person's intention to exceed the ownership limitation or voting limitation to the NYX Holdings board of directors. *See* NYX Holdings Operating Agreement, Article IX, Sections 9.1(a)(2) and (b)(2).

[20] *See* NYX Holdings Operating Agreement, Article IX, Section 9.1(a)(3)(A)–(B) and Section 9.1(b)(3)(A)–(B).

[21] *See* NYX Holdings Operating Agreement, Article IX, Section 9.1(a)(3)(C).

[22] *Id.*

exceed the NYX Holdings ownership restriction and the NYX Holdings voting restriction. In adopting such resolutions, the board of directors of NYX Holdings made the necessary determinations set forth above and approved the submission of the proposed rule changes to the Commission. Among other things, in this notice, ICE Inc. represented to the board of directors of NYX Holdings that neither ICE Inc., nor any of its related persons, is (1) an NYSE Member; (2) an NYSE MKT Member; (3) an ETP Holder; (4) an OTP Holder or OTP Firm; or (5) a U.S. Disqualified Person or a European Disqualified Person. The NYX Holdings board of directors also determined that ownership of NYX Holdings by ICE Inc. is in the best interests of NYX Holdings, the owners of its membership interests, the U.S. Regulated Subsidiaries, and the European Market Subsidiaries.[23]

The Commission believes it is consistent with the Act to allow ICE Inc. to wholly own and vote all of the membership interests of NYX Holdings. The Commission notes that ICE Inc. represents that neither ICE Inc. nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act), or is a member of the Exchange or NYSE MKT, an ETP Holder, an OTP Holder or an OTP Firm, or a European Disqualified Person. ICE Inc. has also included in its corporate documents certain provisions designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from ICE Group, ICE Inc., NYX Holdings and NYSE Group.[24] Accordingly, the Commission believes that the acquisition of ownership and exercise of voting rights of NYX Holdings membership interests by ICE Inc. will not impair the ability of the Commission or any of the U.S. Regulated Subsidiaries to discharge their respective responsibilities under the Act.

*C. Relationship of ICE Inc., NYX Holdings, NYSE Group, and the U.S. Regulated Subsidiaries; Jurisdiction Over ICE Inc.*

ICE Inc.'s activities with respect to the operation of any of the U.S. Regulated Subsidiaries must be consistent with, and not interfere with, the U.S. Regulated Subsidiaries' self-regulatory obligations. The proposed ICE Inc. corporate documents include certain provisions that are designed to maintain the independence of the U.S. Regulated Subsidiaries' self-regulatory functions from ICE Inc., NYX Holdings, and NYSE Group, enable the U.S. Regulated Subsidiaries to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[25] and facilitate the ability of the U.S. Regulated Subsidiaries and the Commission to fulfill their regulatory and oversight obligations under the Act.[26]

For example, under the proposed ICE Inc. Bylaws, ICE Inc. shall comply with the U.S. federal securities laws, the European Exchange Regulations, and the respective rules and regulations thereunder; shall cooperate with the Commission, the European Regulators, and the U.S. Regulated Subsidiaries.[27] Each director, officer, and employee of ICE Inc., to the extent in discharging his or her responsibilities shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate with the U.S. Regulated Subsidiaries.[28] In addition, in discharging his or her responsibilities as a member of the board, each director of ICE Inc. must, to the fullest extent permitted by applicable law, take into consideration the effect that ICE Inc.'s actions would have on the ability of the U.S. Regulated Subsidiaries to carry out their responsibilities under the Act, on the ability of the European Market Subsidiaries to carry out their responsibilities under the European Exchange Regulations as operators of European Regulated Markets, and on the ability of the U.S. Regulated Subsidiaries, NYSE Group, and ICE Inc. (i) to engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, and ICE Inc. to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (v) in general, to protect investors and the public interest.[29] For so long as ICE Inc. directly or indirectly controls any U.S. Regulated Subsidiary, ICE Inc., its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries (to the extent of each U.S. Regulated Subsidiary's self-regulatory function) and the European Market Subsidiaries (to the extent of each European Market Subsidiaries' self-regulatory function).[30] Further, ICE Inc. agrees to keep confidential all confidential information pertaining to: (1) The self-regulatory function of the any U.S. Regulated Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the U.S. Regulated Subsidiaries; and (2) the self-regulatory function of the European Market Subsidiaries under the European Exchange Regulations as operator of a European Regulated Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the European Market Subsidiaries, and not use such information for any commercial[31] purposes.[32]

In addition, ICE Inc.'s books and records shall be subject at all times to inspection and copying by the Commission, the European Regulators, any U.S. Regulated Subsidiary (provided that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight) and any European Market Subsidiary (provided that such books and records are related to the operation or administration of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight).[33] The ICE Inc. Bylaws would provide that these obligations regarding such confidential information will not be interpreted so as

[23] Such resolution of the NYX Holdings board of directors was filed as part of the proposed rule changes. *See* Exhibit E to each of the proposed rule changes, which exhibit is available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*), at the Commission's Public Reference Room, at the NYSE, and on the NYSE's Web site (*http://www.nyse.com*).

[24] *See infra* note 29.

[25] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

[26] *See* proposed ICE Inc. Bylaws Article IX.

[27] *See* proposed ICE Inc. Bylaws, Article IX, Section 9.l and 9.2.

[28] *See* proposed ICE Inc. Bylaws, Article III, Section 3.14(b).

[29] *See* proposed ICE Inc. Bylaws, Article III, Section 3.14(a)(3).

[30] *See* proposed ICE Inc. Bylaws, Article IX, Section 9.4 and 9.5.

[31] The Commission believes that any non-regulatory use of such information would be for a commercial purpose. *See, e.g.,* NYSE-Euronext Merger Order, *supra* note 20, 72 FR at 8041 n. 71.

[32] *See* proposed ICE Inc. Bylaws, Article VIII, Section 8.1.

[33] *See* proposed ICE Inc. Bylaws, Article VIII, Section 8.3.

to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of ICE Inc. to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.[34] ICE Inc.'s books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and ICE Inc.'s books and records related to European Market Subsidiaries shall be maintained in the home jurisdiction of one or more of the European Market Subsidiaries or of any subsidiary of ICE Inc. in Europe.[35] The ICE Inc. Bylaws also provide that if and to the extent than any of ICE Inc.'s books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries (each such book and record an ''Overlapping Record''), ICE Inc. shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.[36]

In addition, for so long as ICE Inc. directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, directors, and employees of ICE Inc. shall be deemed to be the books, records, premises, officers, directors, and employees of the U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Act, and for so long as ICE Inc. directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, directors, and employees of ICE Inc. shall be deemed to be the books, records, premises, officers, directors, and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European Exchange Regulations.[37]

ICE Inc. and its directors and, to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, ICE Inc.'s officers and employees whose principal place of business and residence is outside of the United States irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission with respect to activities relating to the U.S. Regulated Subsidiaries, and to the jurisdiction of the European Regulators and European courts with respect to activities relating to the European Market Subsidiaries.[38]

The ICE Inc. Bylaws would provide that ICE Inc. will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of ICE Inc. to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.[39] Further, ICE Inc. acknowledges that it is responsible for referring possible rule violations to the NYSE Exchanges.

Finally, the proposed ICE Inc. Articles require that, for so long as ICE Inc. controls, directly or indirectly, any of the U.S. Regulated Subsidiaries, any changes to the proposed ICE Inc. Articles be submitted to the board of directors of such U.S. Regulated Subsidiaries, and if any such boards of directors determines that such amendment is required to be filed with or filed with and approved by the Commission pursuant to Section 19 of the Act[40] and the rules thereunder, such change shall not be effective until filed with or filed with and approved by, the Commission.[41]

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the NYSE Exchanges in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act. With respect to the maintenance of books and records of ICE Inc., the Commission notes that while ICE Inc. has the discretion to maintain Overlapping Records in either the United States or the home jurisdiction of one or more of the European Market Subsidiaries, ICE Inc. is liable for any books and records it is required to produce for inspection and copying by the Commission that are created outside the United States and where the law of a foreign jurisdiction prohibits ICE Inc. from providing such books and records to the Commission for inspection and copying.[42] Moreover, the Commission notes that NYX Holdings is under an existing obligation to make its books and records available in compliance with the requirements of Rule 17a–1(b).[43]

Under Section 20(a) of the Act,[44] any person with a controlling interest in the U.S. Regulated Subsidiaries shall be jointly and severally liable with and to the same extent that the U.S. Regulated Subsidiaries are liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[45] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[46] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to ICE Inc.'s dealings with the U.S. Regulated Subsidiaries.

## III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. *It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[47] that the proposed rule changes (SR–NYSE–2014–04; SR–NYSEMKT–2014–10; SR–NYSEArca–2014–08), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–05987 Filed 3–18–14; 8:45 am]

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[34] *See* proposed ICE Inc. Bylaws, Article VIII, Section 8.2.

[35] *See* proposed ICE Inc. Bylaws, Article VIII, Sections 8.4 and 8.5.

[36] *See* proposed ICE Inc. Bylaws, Article VIII, Section 8.6.

[37] *See* proposed ICE Inc. Bylaws, Article VIII, Sections 8.4 and 8.5.

[38] *See* proposed ICE Inc. Bylaws, Article VII, Sections 7.1 and 7.2.

[39] *See* proposed ICE Inc. Bylaws, Article IX, Section 9.3.

[40] 15 U.S.C. 78s.

[41] *See* proposed ICE Inc. Bylaws, Article XI, Section 11.3; proposed ICE Inc. Certificate, Article X(C).

[42] *See* Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033, 8041 (February 22, 2007) (SR–NYSE–2006–120).

[43] The Commission notes that the obligations of NYSE Euronext established in the prior orders remains in effect for its successors entity, i.e., NYX Holdings. NYX Holdings is currently required to maintain in the United States originals or copies of books and records that relate to both the U.S. Regulated Subsidiaries and its European market subsidiaries covered by Rule 17a–1(b) promptly after creation of such books and records. *See id.,* 72 FR 8041, 8042.

[44] 15 U.S.C. 78t(a).

[45] 15 U.S.C. 78t(e).

[46] 15 U.S.C. 78u–3.

[47] *Id.*

[48] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71716; File No. SR–Phlx–2014–14]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate Program and Multiply Listed Options

March 13, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Amend the Customer Rebate Program in Section B of the Pricing Schedule; and (ii) amend Section II of the Pricing Schedule entitled ''Multiply Listed Options Fees.'' [3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend certain Customer Rebate tier percentage thresholds related to the ''Customer Rebate Program,'' in Section B of the Pricing Schedule to provide members a greater opportunity to receive Customer rebates. The Exchange also proposes to amend Section II of the Pricing Schedule to amend certain Non-Penny Pilot Options Transaction Charges in Multiply Listed Options in order to allow the Exchange to fund additional incentives in connection with the Customer Rebate Program in Section B of the Pricing Schedule.

Customer Rebate Program

Currently, the Exchange has a Customer Rebate Program consisting of five tiers that pays Customer rebates on two Categories, A [4] and B,[5] of transactions.[6] A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, except volume associated with electronic Qualified Contingent Cross (''QCC'') Orders,[7] as defined in Exchange Rule 1080(o).[8] The Exchange pays the following rebates: [9]

| Customer rebate tiers | Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (Monthly) | Category A | Category B |
|---|---|---|---|
| Tier 1 | 0.00%–0.45% | $0.00 | $0.00 |
| Tier 2 | Above 0.45%–1.00% | $0.11 | $0.17 |
| Tier 3 | Above 1.00%–1.60% | $0.12 | $0.17 |
| Tier 4 | Above 1.60%–2.50% | $0.16 | $0.19 |
| Tier 5 | Above 2.50% | $0.17 | $0.19 |

The Exchange proposes to amend Tier 1 of the Customer Rebate Program to increase the percentage threshold from 0.00%–0.45% to 0.00%–0.60%. The Exchange would continue to not pay a rebate for Tier 1. The Exchange increasing the percentage threshold in Tier 1 in order to encourage market participants to direct a greater number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This includes options overlying equities, ETFs, ETNs and indexes that are multiply listed.

[4] Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of $0.14 per contract.

[5] Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 3 or higher in the Customer Rebate Program, Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will be paid a rebate of $0.17 per contract.

[6] *See* Section B of the Pricing Schedule.

[7] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[8] Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control.

[9] SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY.

of Customer orders to the Exchange to qualify for the rebate.

The Exchange proposes to amend Tier 2 of the Customer Rebate Program to increase the percentage threshold from above 0.45%–1.00% to above 0.60%–1.10%. The Exchange is increasing the percentage threshold in Tier 2 in order to encourage market participants to direct a greater number of Customer orders to the Exchange to qualify for the rebate. The Exchange also proposes to decrease the Tier 2 Category A rebate from $0.11 to $0.10 per contract. The Category B rebate for Tier 2 will remain at $0.17 per contract. The Exchange proposes to offer a $0.02 per contract rebate in addition to the applicable Tier 2 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership,[10] provided the Specialist or Market Maker has reached the Monthly Market Maker Cap [11] as defined in Section II (''$0.02 Rebate''). The Exchange currently offers this $0.02 Rebate in connection with Tier 3 rebates and is proposing to extend this additional rebate in connection with qualifying for Tier 2 rebates. The additional $0.02 Rebate would increase the Category A Tier 2 rebate from $0.10 to $0.12 per contract. The additional $0.02 Rebate would increase the Category B Tier 2 rebate from $0.17 to $0.19 per contract. The Exchange believes that the rebate will incentivize Customer orders to be directed to the Exchange.

The Exchange proposes to amend Tier 3 of the Customer Rebate Program to increase the percentage threshold from above 1.00%–1.60% to above 1.10%–1.60%. The Exchange would continue to pay a Category A rebate of $0.12 per contract and a Category B rebate of $0.17 per contract. The Exchange is increasing the percentage threshold in Tier 3 to encourage market participants to direct a greater number of Customer orders to the Exchange to qualify for the rebate.

The Exchange is not proposing to amend Tiers 4 or 5 of the Customer Rebate Program.

Section II—Multiply Listed Options Fees Options Transaction Charges

The Exchange currently assesses Professionals,[12] Broker-Dealers [13] and Firms [14] an Options Transaction Charge in Non-Penny Pilot Options of $0.60 per contract with respect to electronic orders. Professionals are assessed a reduced fee of $0.30 per contract with respect to electronic Complex Orders.[15] The Exchange is proposing to increase Professional, Broker-Dealer and Firm Options Transaction Charges in Non-Penny Pilot Options from $0.60 to $0.70 per contract with respect to electronic orders. Professionals will continue to be offered the reduced fee of $0.30 per contract with respect to electronic Complex Orders. Despite these increases, the Exchange believes that these fees remain competitive with other options exchanges [16] and permit the Exchange to incentivize its market participants by offering additional rebate incentives in Section B of the Pricing Schedule.[17]

Additionally, the Exchange proposes to offer Professionals, Broker-Dealers and Firms the opportunity to reduce the proposed electronic Options Transaction Charge in Non-Penny Pilot Options from $0.70 to $0.60 per contract if the member or member organization under Common Ownership with another member or member organization qualifies, in a given month, for Customer Rebate Tiers 2, 3, 4, or 5 in Section B of the Pricing Schedule. With respect to Professionals, electronic Complex Orders will continue to be assessed $0.30 per contract, regardless of any Customer Rebate qualification. The Exchange believes that this incentive will encourage market participants to transact a greater number of electronic Customer orders to obtain the lower fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to amend Tier 1 of the Customer Rebate Program to increase the percentage threshold from 0.00%–0.45% to 0.00%–0.60% is reasonable because the Exchange recently lowered certain Customer Rebate Tier percentage thresholds and even adopted a new tier.[20] The Exchange does not believe that those amendments to lower certain percentage thresholds resulted in a greater amount of Customer liquidity to the market and is now proposing to increase those percentage thresholds. With this proposal, members that currently qualify for a non-paying Tier 1 rebate may qualify for a Tier 2 rebate by transacting greater than 0.60% of national customer volume in multiply listed equity and ETF options (excluding SPY). The Exchange desires to increase the Tier 1 percentage thresholds to encourage market participants to direct a greater amount of Customer orders to Phlx to obtain a Tier 2 or higher rebate. Members qualifying for Tier 1 will not receive a rebate.

The Exchange's proposal to amend Tier 1 of the Customer Rebate Program

[10] The term ''Common Ownership'' means members or member organizations under 75% common ownership or control.

[11] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap. In addition, Specialists or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order; and (ii) have reached the Monthly Market Maker Cap are assessed a $0.17 per contract fee.

[12] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[13] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[14] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

[15] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[16] *See* The NASDAQ Options Market LLC's (''NOM'') Rules at Chapter XV, Section 2 and BATS Exchange, Inc.'s (''BATS'') Fee Schedule. NOM assesses an $0.89 transaction fee to remove liquidity in Non-Penny Pilot Options to Professionals, Firms and Broker-Dealers. BATS assesses an $0.89 charge per contract for a Professional or Firm that removes liquidity from the BATS Options order book.

[17] The Exchange is offering an additional rebate in connection with qualifying for Tier 2 rebates to encourage additional Customer order flow, as described in this proposal.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *See* Securities Exchange Act Release No. 71257 (January 8, 2014), 79 FR 2489 (January 14, 2014) (SR–Phlx–2014–03).

to increase the percentage threshold from 0.00%–0.45% to 0.00%–0.60% is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

The Exchange's proposal to amend Tier 2 of the Customer Rebate Program to increase the percentage threshold from above 0.45%–1.00% to above 0.60%–1.10% is reasonable because the Exchange recently lowered certain Customer Rebate Tier percentage thresholds and even adopted a new tier.[21] The Exchange does not believe that those amendments to lower certain percentage thresholds resulted in a greater amount of Customer liquidity to the market and is now proposing to increase those percentage thresholds. With this proposal, members that currently qualify for a Tier 2 would need to increase the amount of Customer volume by transacting greater than 0.60% of national customer volume in multiply listed equity and ETF options (excluding SPY). The Exchange is also lowering the Category A Tier 2 rebate from $0.11 to $0.10 per contract, but is also offering the opportunity to earn an additional $0.02 Rebate, when qualifying for Tier 2 rebates, as described in this proposal. The Exchange believes that despite the increased volume required to qualify for a Tier 2 rebate and the reduced Tier 2 Category A rebate, market participants will continue to be encouraged to direct electronic Customer liquidity to Phlx to earn rebates.

The Exchange's proposal to amend Tier 2 of the Customer Rebate Program to increase the percentage threshold from above 0.45%–1.00% to above 0.60%–1.10% is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate, provided they transact a qualifying amount of electronic Customer volume. In addition, the Exchange's proposal to lower the Category A Tier 2 rebate from $0.11 to $0.10 per contract is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter.

The Exchange believes that its proposal to pay a $0.02 Rebate in addition to Tier 2 rebates to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, is reasonable because the Exchange desires to encourage market participants to transact a greater number of Customer orders on the Exchange to receive the enhanced rebate. Today, the Exchange offers this enhanced rebate to Specialists and Market Makers that qualify for a Tier 3 rebate. The Exchange proposes to expand this offer to Tier 2 rebates to further encourage these market participants to direct Customer order flow to the Exchange.

The Exchange believes that its proposal to pay a $0.02 Rebate in addition to the applicable Tier 2 rebate to a Specialist or Market Maker, or its affiliate under Common Ownership, provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, is equitable and not unfairly discriminatory because unlike other market participants, Specialists and Market Makers have burdensome quoting obligations[22] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Specialists and Market Makers serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace. Additionally, Specialists and Market Makers incur costs unlike other market participants including, but not limited to, PFOF and other costs associated with market making activities,[23] which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professionals. The proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants. The Exchange is continuing to offer the Tier 2 rebate to all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend Tier 3 of the Customer Rebate Program to increase the percentage threshold from above 1.00%–1.60% to above 1.10%–1.60% is reasonable because the Exchange recently lowered certain Customer Rebate Tier percentage thresholds and even adopted a new tier.[24] The Exchange does not believe that those amendments to lower certain percentage thresholds resulted in a greater amount of Customer liquidity to the market and is now proposing to increase those percentage thresholds. With this proposal, members that currently qualify for a Tier 3 rebate would need to increase the amount of Customer volume by transacting greater than 1.10% of national customer volume in multiply listed equity and ETF options (excluding SPY) to continue to receive a Tier 3 rebate. The Exchange believes that despite the increased Customer volume required to qualify for Tier 3 rebate, market participants will continue to be encouraged to direct electronic Customer liquidity to Phlx to earn rebates.

The Exchange's proposal to amend Tier 3 of the Customer Rebate Program to increase the percentage threshold from above 1.00%–1.60% to above 1.10%–1.60% is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

Section II—Multiply Listed Options Fees Options Transaction Charges

The Exchange's proposal to increase electronic Professional, Broker-Dealer and Firm Options Transaction Charges in Non-Penny Pilot Options from $0.60 to $0.70 per contract is reasonable because the Exchange's fees will remain competitive with fees at other options markets,[25] despite the fee increase, and will allow the Exchange to incentivize market participants by offering additional rebate incentives in Section B of the Pricing Schedule.[26]

The Exchange's proposal to increase electronic Professional, Broker-Dealer and Firm Options Transaction Charges in Non-Penny Pilot Options from $0.60 to $0.70 per contract is equitable and not unfairly discriminatory because the Exchange will assess Professionals, Broker-Dealers and Firms the same electronic Options Transaction Charge

[21] *See* note 19 [sic].

[22] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[23] Specialists and Market Makers pay for certain data feeds including the SQF Port Fee. SQF Port Fees are listed in the Exchange's Pricing Schedule at Section VII. SQF is an interface that allows Specialists and Market Makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

[24] *See* note 19 [sic].

[25] *See* note 16.

[26] The Exchange is offering an additional $0.02 Rebate in connection with Tier 2 to further incentivize market participants to direct Customer orders to the Exchange. The $0.02 Rebate will be paid to Exchange member organizations.

in Non-Penny Pilot Options. The Exchange does not assess Customers an electronic Options Transaction Charge in Non-Penny Pilot Options because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Specialists and Market Makers are assessed lower electronic Options Transaction Charges in Non-Penny Pilot Options as compared to Professionals, Broker-Dealers and Firms because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[27] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange's proposal to offer Professionals, Broker-Dealers and Firms the opportunity to reduce the proposed electronic Options Transaction Charges in Non-Penny Pilot Options from $0.70 to $0.60 per contract, if the member or member organization under Common Ownership with another member or member organization qualifies, in a given month, for Customer Rebate Tiers 2, 3, 4, or 5 in Section B of the Pricing Schedule, is reasonable because the Exchange is offering these market participants an opportunity to lower the proposed fees by transacting a certain amount of Customer orders. The Exchange believes that this incentive will encourage market participants to transact a greater number of electronic Non-Penny Pilot Options Customer orders to obtain the lower fees. The Exchange would continue to assess Professionals a $0.30 per contract Options Transaction Charge for electronic Complex Orders, regardless of any Customer Rebate qualification. Today, a Professional is assessed a $0.30 per contract electronic Options Transaction Charge in Non-Penny Pilot Options when transacting Complex Orders as compared to a $0.60 per contract electronic Options Transaction Charge in Non-Penny Pilot Options when transacting Simple Orders. The reduced fee assessed to Professionals is comparable with electronic Professional fees at other options exchanges.[28]

The Exchange's proposal to offer Professionals, Broker-Dealers and Firms the opportunity to reduce the proposed electronic Options Transaction Charges in Non-Penny Pilot Options from $0.70 to $0.60 per contract if the member or member organization under Common Ownership with another member or member organization qualifies, in a given month, for Customer Rebate Tiers 2, 3, 4, or 5 in Section B of the Pricing Schedule, is equitable and not unfairly discriminatory because the Exchange is offering these market participants, that are assessed the highest fees, the opportunity to reduce these fees.[29] The Exchange is proposing to offer Professionals, Broker-Dealers and Firms an opportunity to reduce the proposed electronic Options Transaction Charges in Non-Penny Pilot Options by transacting Customer orders, which would also benefit these market participants in terms of a potential Section B rebates, which they may qualify for by adding Customer liquidity on Phlx. As previously mentioned, Customers are not assessed an electronic Options Transaction Charge in Non-Penny Pilot Options and Specialists and Market Makers pay lower Options Transaction Charges as compared to Professionals, Broker-Dealers and Firms. The Exchange believes that it is equitable and not unfairly discriminatory to continue to assess Professionals a reduced fee of $0.30 per contract for electronic Complex Orders in Non-Penny Pilot Options because Professionals engage in trading activity similar to that conducted by Specialists or Market Makers. For example, Professionals continue to join bids and offers on the Exchange and thus compete for incoming order flow. For these reasons, the Exchange assesses Professionals a Non-Penny Pilot electronic Options Transaction Charge at a rate that is greater than fees assessed to a Specialist and Market Maker and equal to electronic fees assessed to a Firm and Broker-Dealer. Specialists and Market Makers are assessed lower electronic fees as compared to non-Customer market participants, because Specialists and Market Makers have burdensome quoting obligations[30] to the market that do not apply to Customers, Professionals, Firms and Broker-Dealers. Customers are not assessed Options Transactions Charges in Non-Penny Pilot Options because Customer order flow brings liquidity to the market, which in turn benefits all market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. Market participants will be encouraged to transact a greater number of Customer orders to qualify for a rebate. By incentivizing members to route Customer orders to the Exchange, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. All market participants are eligible to qualify for a Customer Rebate.

The Exchange believes the proposed amendments will continue to encourage market participants to direct Customer liquidity to Phlx despite the increase in the tier volumes and also the Tier 2 rebate decrease. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange. A market participant will be required to transact more Customer volume to earn certain Customer rebates. While some participants will be required to transact a greater number of Customer orders to continue to earn a Tier 2 or 3 rebate, and some will earn a lower Tier 2 Category A rebate, the Exchange believes that

[27] *See* note 22.

[28] The Chicago Board Options Exchange, Incorporated (''CBOE'') assesses a Professional and Voluntary Professional a $0.30 per contract electronic fee in Penny and Non-Penny Classes. *See* CBOE's Fees Schedule. Also, NYSE MKT LLC (''NYSE Amex'') assesses a tiered electronic Professional Customer rate starting at $.32 per contract for electronic orders which take liquidity from 0 to 16,999 contracts. *See* NYSE Amex's Options Fee Schedule.

[29] Customers are not assessed a Non-Penny Pilot Options Transaction Charge and Specialists and Market Makers are assessed a lower electronic Non-Penny Pilot Options Transaction Charge of $0.23 per contract.

[30] *See* note 22.

members will be encouraged to transact a greater number of Customer contracts to continue to earn rebates, which will promote competition.

In addition, Specialists and Market Makers may qualify for a $0.02 Rebate by qualifying for Tier 2, which should incentivize Specialists and Market Makers to transact a greater number of Customer orders on the Exchange to achieve the $0.02 Rebate and therefore would not create an undue burden on competition, but would instead encourage competition.

The Exchange's proposal to increase electronic Professional, Broker-Dealer and Firm Options Transaction Charges in Non-Penny Pilot Options from $0.60 to $0.70 per will not impose an undue burden on competition because the Exchange will assess Professionals, Broker-Dealers and Firms the same electronic Options Transaction Charge in Non-Penny Pilot Options. The Exchange does not assess Customers an electronic Options Transaction Charge in Non-Penny Pilot Options because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specialists and Market Makers are assessed lower electronic Options Transaction Charges in Non-Penny Pilot Options as compared to Professionals, Broker-Dealers and Firms because they have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[31] The differentiation as between Customers, Specialists and Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Additionally, Professionals, Broker-Dealers and Firms may reduce their Options Transaction Charges to $0.60 per contract provided they qualify for Customer Rebate Tiers 2, 3, 4 or 5 in Section B of the Pricing Schedule. This incentive encourages these participants to add Customer liquidity on Phlx which liquidity benefits all market participants.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[32] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–14, and should be submitted on or before April 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–05983 Filed 3–18–14; 8:45 am]

**BILLING CODE 8011–01–P**

[31] *See* note 22.

[32] 15 U.S.C. 78s(b)(3)(A)(ii).

[33] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71722; File No. SR–NYSEARCA–2014–22]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Establish Pricing for the Retail Liquidity Program and Make Certain Changes Relating to Open Orders

March 13, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 28, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to (i) establish pricing for the Retail Liquidity Program and (ii) make certain changes relating to open orders. The Exchange proposes to implement the fee change effective March 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) establish pricing for the Retail Liquidity Program and (ii) make certain changes relating to open orders. The Exchange proposes to implement the fee change effective March 1, 2014.

Retail Liquidity Program

The Retail Liquidity Program has been approved by the Commission to operate for one year as a pilot program.[4] The Retail Liquidity Program is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges (''UTP Securities''), excluding securities listed on New York Stock Exchange LLC (''NYSE''), while also providing the potential for price improvement to such order flow.

Two new classes of market participants were created under the Retail Liquidity Program: (1) Retail Member Organizations (''RMOs''),[5] which are eligible to submit certain retail order flow (''Retail Orders'')[6] to the Exchange, and (2) Retail Liquidity Providers (''RLPs''),[7] which are required to provide potential price improvement for RMO Retail Orders in the form of non-displayed interest (''Retail Price Improvement Orders'' or ''RPIs'') that is better than the best protected bid (''PBB'') or the best protected offer (''PBO'') (together, the ''PBBO'').[8] ETP Holders other than RLPs are also permitted, but not required, to submit RPIs.

An RMO submitting an RMO Retail Order could designate several ways for the RMO Retail Order to interact with available contra-side interest.[9] Such contra-side interest could be against RPIs or against other non-displayed liquidity and displayable odd lot interest priced better than the PBBO (''other price-improving interest''), all of which the Exchange would consider within the Retail Liquidity Program.[10] If the RMO Retail Order has not completely executed against such interest within the Retail Liquidity Program, the RMO Retail Order could alternatively execute outside of the Retail Liquidity Program against contra-side interest on the NYSE Arca Book or on an away market after routing, if so designated.

In proposing the Retail Liquidity Program, the Exchange stated that it would submit a separate proposal to amend its Fee Schedule in connection with the Retail Liquidity Program.[11] Accordingly, the Exchange proposes to adopt the following pricing:[12]

- RPIs of RLPs would be free if executed against RMO Retail Orders;
- RPIs of non-RLPs would be free if executed against RMO Retail Orders;[13]
- Other price-improving interest would receive applicable Tiered or Basic Rates in the Fee Schedule if executed against RMO Retail Orders; and
- RMO Retail Orders would receive a credit of $0.0005 per share if executed against RPIs of RLPs and non-RLPs or against other price-improving interest.

The proposed credit of $0.0005 per share for RMO Retail Orders would only apply to RMO Retail Orders if executed within the Retail Liquidity Program (i.e.,

[4] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

[5] ''RMO'' is defined in Rule 7.44(a)(2) as an ETP Holder that is approved by the Exchange to submit Retail Orders.

[6] ''Retail Order'' is defined in Rule 7.44(a)(3) as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. As described further below, designation of an order as a Retail Order of an RMO for purposes of the Retail Liquidity Program is separate from the designation of an order as a Retail Order for purposes of existing pricing tiers in the Fee Schedule. For that reason, the remainder of this proposal will refer to Retail Orders of RMOs within the Retail Liquidity Program as ''RMO Retail Orders'' and to other Retail Orders outside of the Retail Liquidity Program just as ''Retail Orders.''

[7] ''RLP'' is defined in Rule 7.44(a)(1) as an ETP Holder that is approved by the Exchange to act as such and that is required to submit Retail Price Improvement Orders in accordance with Rule 7.44.

[8] ''RPI'' is defined in Rule 7.44(a)(4) and consists of non-displayed interest in NYSE Arca-listed securities and UTP Securities that is priced better than the PBB or PBO, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (''NBB'') and national best offer (''NBO''), respectively, will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611. *See* Rule 7.44(a)(4) for additional details regarding RPIs.

[9] *See* Rule 7.44(k) for a description of the various RMO Retail Order designations.

[10] While such other price-improving interest would not be considered a new order type, executions of such other price-improving interest against RMO Retail Orders would be considered part of the Retail Liquidity Program for purposes of differentiating between such interest and other available contra-side interest in Exchange systems (e.g., interest on the NYSE Arca Book) or on an away market after routing.

[11] *See supra* note 4 at 79525, n. 8.

[12] Participation in the Retail Liquidity Program is optional and, accordingly, the pricing proposed herein would not apply to an ETP Holder that does not choose to participate. Because the Retail Liquidity Program has been approved to operate as a one-year pilot program, the Exchange anticipates that it will periodically review this pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and UTP Securities while also providing the potential for price improvement to such order flow.

[13] The Exchange originally anticipated that RLPs could receive special execution fees for executing RPIs against RMO Retail Orders, as compared to non-RLPs, in exchange for satisfying certain specified quoting obligations. *See supra* note 4 at 79525. These quoting obligations would not apply until the first day of the third consecutive calendar month after the ETP Holder begins operation as an RLP. *See* Rule 7.44(f)(3); *supra* note 4 at 79527. Therefore, at this time, the Exchange is proposing that the same pricing would apply to RLPs and non-RLPs for executions of RPIs. The Exchange may consider applying different pricing to RLP and non-RLP executions of RPIs at a later date, but such change in pricing would be the subject of a separate, subsequent proposal submitted by the Exchange to the Commission.

against RPIs of RLPs and non-RLPs or against other price-improving interest). An RMO Retail Order that executes outside of the Retail Liquidity Program would be considered just a Retail Order (not an ''RMO'' Retail Order) and receive pricing applicable to Tiered or Basic Rates in the Fee Schedule.[14] In this regard, the Fee Schedule currently includes a Retail Order Tier and a Retail Order Cross-Asset Tier (together, the ''Retail Order Tiers''), which are separate and distinct from the Retail Liquidity Program and provide for incrementally higher credits for ETP Holders that satisfy certain qualification thresholds related to executions of Retail Orders.[15]

Designation of an order as a Retail Order for purposes of the Retail Order Tiers is separate from the designation of an order as an RMO Retail Order for purposes of the Retail Liquidity Program, despite the characteristics of Retail Orders and RMO Retail Orders being identical (i.e., they must all satisfy the definition of Retail Order in Rule 7.44(a)(3)).[16] Executions of RMO Retail Orders against RPIs or against other price-improving interest within the Retail Liquidity Program would count toward the qualification thresholds of the Retail Order Tiers, but would not be eligible for the corresponding credits available under the Retail Order Tiers.[17]

An ETP Holder would remain able to designate an order as a Retail Order for purposes of the Retail Order Tiers without designating the order as an RMO Retail Order for purposes of the Retail Liquidity Program. The result would be that the Retail Order would not be eligible to execute against RPIs or receive the $0.0005 credit proposed herein. An ETP Holder could also designate an order as an RMO Retail Order for purposes of the Retail Liquidity Program and as a Retail Order for purposes of the Retail Order Tiers, in which case the Exchange would consider the order to be an RMO Retail Order within the Retail Liquidity Program for any executions against RPIs or other price-improving interest and then just a Retail Order for purposes of the Retail Order Tiers for any executions outside of the Retail Liquidity Program against liquidity on the NYSE Arca Book.[18]

Open Orders

The Exchange proposes to amend footnote 10 in the Fee Schedule, which relates to Market Maker fees and credits, to eliminate the restriction that credits will not be applied to open orders (e.g., ''Good Till Cancelled'' or ''GTC'' Orders) executed after the trading date on which they were entered. The Exchange is eliminating the restriction to encourage more orders to be submitted and enhance liquidity on the Exchange.[19]

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[22] While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types.

Overall, the Exchange believes that the proposed change is reasonable because it would establish pricing designed to increase competition among execution venues, encourage additional liquidity and offer the potential for price improvement to retail investors. The Exchange believes that the $0.0005 credit proposed for RMO Retail Order executions against RPIs or other price-improving interest is reasonable because it would create a financial incentive to bring additional retail order flow to a public market. This rate is also reasonable because it is the same rate that applies to RMO Retail Orders under the NYSE Retail Liquidity Program.[23] The Exchange also believes that not

[14] As is currently the case, applicable charges would be based on an ETP Holder's qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

[15] The Retail Order Tier provides for a credit of $0.0033 per share of Retail Orders that provide liquidity to the NYSE Arca Book for an ETP Holder that executes an average daily volume (''ADV'') of Retail Orders during the month that is 0.20% or more of U.S. consolidated ADV (''CADV''). The Retail Order Cross-Asset Tier provides for a credit of $0.0034 per share of Retail Orders that provide liquidity to the NYSE Arca Book for an ETP Holder that executes an ADV of Retail Orders during the month that is 0.30% or more of U.S. CADV and that is affiliated with an NYSE Arca Options Trading Permit (''OTP'') Holder or OTP Firm that provides an ADV of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.50% of total Customer equity and exchange-traded fund option ADV as reported by The Options Clearing Corporation.

[16] An ETP Holder may designate an order as a Retail Order for purposes of the Retail Order Tiers either (1) by designating certain order entry ports at the Exchange as ''Retail Order Ports'' and attesting, in a form and/or manner prescribed by the Exchange, that all orders submitted to the Exchange via such Retail Order Ports are Retail Orders; or (2) by means of a specific tag in the order entry message. *See, e.g.,* Securities Exchange Act Release No. 68322 (November 29, 2012), 77 FR 72425 (December 5, 2012) (SR–NYSEArca–2012–129). The Exchange proposes non-substantive changes to (1) replace the description of Retail Order in the Fee Schedule with cross-references to Rule 7.44(a)(3), and (2) change a reference in the Retail Order Cross-Asset Tier description from CADV to ADV.

[17] The credits under the Retail Order Tiers apply only to orders that provide liquidity. An RMO Retail Order that executes against an RPI or other price-improving interest within the Retail Liquidity Program would always be considered to remove liquidity (e.g., the RPI or other price-improving interest would provide liquidity and the RMO Retail Order would remove liquidity). In contrast, Retail Orders outside of the Retail Liquidity Program could either provide or remove liquidity, depending on the circumstances. As described in note 14 above, the Retail Order Tier credits apply only to executions of Retails Orders that provide liquidity.

[18] While unlikely, an ETP Holder could also designate an order as an RMO Retail Order for purposes of the Retail Liquidity Program but not as a Retail Order for purposes of the Retail Order Tiers. The result would be that executions of the RMO Retail Order against RPIs or other price-improving interest within the Retail Liquidity Program would count toward the qualification thresholds of the Retail Order Tiers. However, any subsequent executions of the order against the NYSE Arca Book would not be considered Retail Order executions and would therefore neither count toward the qualification thresholds of the Retail Order Tiers nor be eligible for the Retail Order Tier credits.

[19] The Exchange recently made a similar change to non-Market Maker pricing. *See* Securities Exchange Act Release No. 71214 (December 31, 2013), 79 FR 873 (January 7, 2014) (SR–NYSEArca–2013–146).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4) and (5).

[22] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (''Concept Release'') (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[23] Rule 7.44 is based on NYSE Rule 107C, which governs NYSE's ''Retail Liquidity Program.'' The NYSE Retail Liquidity Program was approved by the Commission and commenced operations on August 1, 2012. *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84).

charging RLPs and non-RLPs for their executions of RPIs against RMO Retail Orders is reasonable because it could contribute to robust amounts of price-improved, RPI liquidity being available for interaction with the RMO Retail Orders and could therefore result in greater price improvement for RMO Retail Orders. The Exchange also believes that applying Tiered or Basic rates to executions of other price-improving interest against RMO Retail Orders is reasonable because such other price-improving interest would be included within the Retail Liquidity Program for potential interaction with RMO Retail Orders, but without being so designated by ETP Holders, and because Tiered or Basic rates are the rates that would otherwise apply to such other price-improving interest absent their interaction with RMO Retail Orders. The Exchange also believes that it is reasonable to apply Tiered or Basic rates to RMO Retail Orders that execute outside of the Retail Liquidity Program as just Retail Orders (i.e., against the NYSE Arca Book or routed away from the Exchange and executed on another market) because these are the rates that would otherwise apply to such orders absent their designation as an RMO Retail Order within the Retail Liquidity Program (i.e., just as a Retail Order).

The pricing proposed herein is equitable and, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange also believes that it is equitable and not unfairly discriminatory for orders designated as RMO Retail Orders within the Retail Liquidity Program to count toward determining qualifications for the Retail Order Tiers because the characteristics of RMO Retail Orders and other Retail Orders are the same. This is also equitable and not unfairly discriminatory because these existing pricing tiers would remain available to all ETP Holders, including those ETP Holders that choose to designate an order as an RMO Retail Order for purposes of the Retail Liquidity Program and as a Retail Order for purposes of the Retail Order Tiers.

The proposed pricing could result in an RPI receiving a rate (i.e., free) that is inferior to the rate received by other price-improving interest (e.g., a $0.0015 per share credit under Basic Rates for a Mid-Point Passive Liquidity Order that provides liquidity to the NYSE Arca Book), even when both execute against an RMO Retail Order. The Exchange believes that this is equitable and not unfairly discriminatory because RPIs would only execute against RMO Retail Orders, whereas other price-improving interest could execute against RMO Retail Orders or other marketable interest, including non-retail liquidity.[24] In this regard, and as previously recognized by the Commission, ''markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.'' [25] The Exchange has sought to balance this view in setting the pricing of RPIs compared to other price-improving interest, recognizing that the ability to limit interaction only to RMO Retail Orders could be a potential benefit applicable only to RPIs. This is also equitable and not unfairly discriminatory because the use of RPIs by RLPs and non-RLPs is voluntary. ETP Holders that perceive that the potential advantages of interacting with RMO Retail Orders outweigh the potential costs (i.e., providing price improvement and potential inferior pricing as compared to other price-improving interest) may choose to utilize RPIs, but those that do not are free to forgo involvement in the Retail Liquidity Program.

The Exchange believes that eliminating the restriction on open orders in footnote 10 in the Fee Schedule and making credits available to open orders that execute after the day that they are entered is reasonable because it may encourage more open orders to be submitted, which may enhance liquidity on the Exchange. The Exchange believes that the proposed change to footnote 10 in the Fee Schedule is equitable and not unfairly discriminatory because all ETP Holders would have the opportunity to earn credits for open orders that do not execute on the day entered.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

[24] This is also similar to the manner in which the NASDAQ Stock Market, LLC (''NASDAQ'') applies pricing for its ''Retail Price Improvement Program.'' *See* NASDAQ Rule 7018(g).

[25] *See* SR–NYSE–2011–55, *supra* note 23 at 40679–80 (citing the Concept Release).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[26] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. In this regard, the Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would encourage competition and result in better prices for retail investors. The Exchange believes that the proposed change to footnote 10 in the Fee Schedule would not impose a burden on competition but rather will create an incentive to submit open orders to the Exchange, thereby promoting competition.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

[26] 15 U.S.C. 78f(b)(8).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [27] of the Act and subparagraph (f)(2) of Rule 19b–4 [28] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [29] of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–22 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2014–22 and should be submitted on or before April 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–05988 Filed 3–18–14; 8:45 am]

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[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(2).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71719; File No. SR–CME–2014–07]**

## Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Proposed Rule Change to Adopt Rule 980.F

March 13, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II, below, which Items have been prepared primarily by CME. 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

CME proposes to make amendments to CME Rule 980 by adding a new paragraph F. The new provision would provide for administrative fees to be imposed for late submissions of reports and other financial information to CME's Financial and Regulatory Surveillance Department (''FRSD''). Under the proposed changes, CME's FRSD would be able to assess clearing members a $1,000 administrative fee for each required submission that is not received by the due date and time. The proposed rule language would also allow the FRSD to, in its discretion, waive assessment of the administrative fee for good cause shown.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME proposes to make rule changes to CME Rule 980. Current CME Rule 980 sets out required records and reports for clearing members of CME. The proposed changes would add a new paragraph F. CME has also made filings with the CFTC, Submission No. 13–581 and Submission No. 14–023, regarding the proposed changes to new paragraph F to existing Rule 980.

The new provision would provide for administrative fees to be imposed for late submissions of reports and other financial information to CME's Financial and Regulatory Surveillance Department (''FRSD''). Under the proposed changes, CME's FRSD would be able to assess clearing members a $1,000 administrative fee for each required submission that is not received by the due date and time. The proposed rule language would also allow the FRSD to, in its discretion, waive assessment of the administrative fee for good cause shown.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The new language is intended to address timely reporting of required financial information. To the extent a firm shows a pattern or practice of late submissions that could potentially indicate insufficient internal accounting controls or procedures, CME notes that there are separate existing processes available via the Clearing House Risk Committee which can result in additional disciplinary sanctions in appropriate circumstances. The imposing of an administrative fee that is the subject of this provision is not intended to replace these existing Clearing House Risk Committee processes. Rather, the new language is intended to supplement these processes by giving CME the ability to impose a $1,000 administrative fee on clearing members for each late submission of required reports.

CME plans to operationalize the proposed changes on April 15, 2014, pending applicable regulatory reviews and approvals. CME has also made filings with the CFTC, Submission No. 13–581 and Submission No. 14–023, regarding the proposed changes.

CME, a derivatives clearing organization, notes that it is implementing the proposed changes as part of an effort to discharge its regulatory obligations under the Commodity Exchange Act (''CEA'') more effectively.[3] CME believes the proposed rule changes are also entirely consistent with the requirements of the Exchange Act and the rules and regulations thereunder, including Section 17A of the Exchange Act. The proposed changes enhance CME's self-regulatory organization function by providing the ability to assess a $1,000 administrative fee on clearing members for late submissions of financial information to CME's FRSD. These changes will strengthen CME's self-regulatory organization function and will encourage more accurate financial reporting by clearing members, which are goals that are clearly designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of CME or for which it is responsible, and, in general, to protect investors and the public interest in a way that is consistent with Section 17A(b)(3)(F) of the Exchange Act.[4]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed changes will give CME the ability to impose a $1,000 administrative fee on clearing members for the late submission of required reports and financial information.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comment@sec.gov*. Please include File No. SR–CME–2014–07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2014–07. 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 or 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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–CME–2014–07 and should be submitted on or before April 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–05985 Filed 3–18–14; 8:45 am]

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[3] CME notes that the CEA contains a number of provisions that are comparable to the policies underlying the Exchange Act, including, for example, promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 8661]**

### Notification of the Eighth Meeting of the Environmental Affairs Council of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR)

**AGENCY:** Department of State.

**ACTION:** Notice of the CAFTA–DR Environmental Affairs Council Meeting and request for comments.

**SUMMARY:** The Department of State and the Office of the United States Trade Representative are providing notice that the parties to the Dominican Republic-Central America-United States Free

Trade Agreement (CAFTA–DR) intend to hold the eighth meeting of the Environmental Affairs Council (Council) established under Chapter 17 of that agreement in New Orleans, Louisiana on April 2 and 3, 2014 at Tulane University Law School. The purpose of the Council meeting is to review implementation of Chapter 17 (Environment) of CAFTA–DR. All interested persons are invited to attend a public session beginning at 9:30 a.m. on April 3, 2014.

During the Council meeting, Council Members will discuss progress in implementing Chapter 17 obligations and the results of environmental cooperation in their respective countries. The Council will also hear presentations from the CAFTA–DR Secretariat for Environmental Matters (SEM) and the Organization of American States (OAS). At the public session, the Council will highlight issues discussed during the Council meeting, with a particular focus on Chapter 17 obligations and environmental cooperation.

All interested persons are invited to attend the public session where they will have the opportunity to ask questions and discuss implementation of Chapter 17 and environmental cooperation. In addition, the SEM will present on the public submission process established under Chapter 17 and the OAS will present on environmental cooperation activities. More information on the Council is included below under Supplementary Information.

The Department of State and Office of the United States Trade Representative invite written comments or suggestions regarding the meeting. We encourage those considering submitting comments to refer to Chapter 17 of CAFTA–DR, the Final Environmental Review of CAFTA–DR, and the Agreement among the CAFTA–DR countries on Environmental Cooperation Activities. *(All documents are available at http://www.state.gov/e/oes/eqt/trade/caftadr/index.htm.)*

**DATES:** The public session of the Council will be held on April 3, 2014, from 9:30 a.m.–1:00 p.m. We request comments and suggestions in writing no later than March 28, 2014.

**ADDRESSES:** Written comments or suggestions should be submitted to both:

(1) Eloise Canfield, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues by email to *CanfieldM2@state.gov* with the subject line ''CAFTA–DR EAC Meeting'' or by fax to (202) 647–5947; and

(2) Sarah Stewart, Director for Environment and Natural Resources, Office of the United States Trade Representative by email to *Sarah_Stewart@ustr.eop.gov* with the subject line ''CAFTA–DR EAC Meeting'' or by fax to (202) 395–9517. If you have access to the Internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number DOS–2014–0005.

**FOR FURTHER INFORMATION CONTACT:** Eloise Canfield, (202) 647–4750 or Sarah Stewart, (202) 395–3858.

**SUPPLEMENTARY INFORMATION:** Article 17.5 of CAFTA–DR establishes an Environmental Affairs Council (the Council). Article 17.5 requires the Council to meet to oversee the implementation of, and review progress under, Chapter 17. Article 17.5 further requires, unless the governments otherwise agree, that each meeting of the Council include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of Chapter 17.

In Article 17.9 of CAFTA–DR, the governments recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations and state their commitment to expanding their cooperative relationship on environmental matters. Article 17.9 also references the Environmental Cooperation Agreement, which sets out certain priority areas of cooperation on environmental activities that are also reflected in Annex 17.9 of CAFTA–DR. These priority areas include, among other things: Reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and policies; conserving and managing shared, migratory, and endangered species in international trade and management of protected areas; promoting best practices leading to sustainable management of the environment; and facilitating technology development and transfer and training to promote clean production technologies.

If you would like to attend the public session, please notify Eloise Canfield at the email address listed above under the heading **ADDRESSES**. Please include your full name and identify any organization or group you represent. In preparing comments, we encourage submitters to refer to:

- Chapter 17 of CAFTA–DR,
- The Final Environmental Review of CAFTA–DR, and
- The Environmental Cooperation Agreement.

These documents are available at: *http://www.state.gov/e/oes/eqt/trade/caftadr/index.htm.* Visit *http://www.state.gov* and the USTR Web site at *www.ustr.gov* for more information.

Dated: March 12, 2014.

**Deborah Klepp,**

*Director, Office of Environmental Quality and Transboundary Issues, U.S. Department of State.*

[FR Doc. 2014–06060 Filed 3–18–14; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Property at the Malin Airport, Malin, Oregon

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

**ACTION:** Request for public comments.

**SUMMARY:** The FAA proposes to rule and invite public comment on the release of land at Malin Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

The FAA Modernization and Reform Act of 2012, HR 658, section 817, gave the Secretary of Transportation the authorization to grant an airport, city, or county release from any of the terms, conditions, reservations, or restrictions contained in a deed under which the United States conveyed to the airport, city, or county an interest in real property for airport purposes pursuant to section 16 of the Federal Airport Act (60 Stat. 179) or section 23 of the Airport and Airway Development Act of 1970 (84 Stat. 232).

On March 7, 2014, the FAA determined that the request to release property at the Malin Airport submitted by the City of Malin meets the procedural requirements of the Federal Aviation Administration.

The City of Malin is proposing the release from the terms, conditions, reservations, and restrictions on a 0.14 acre parcel of property by an instrument of disposal dated August 16, 1951. The property was conveyed to the City of Malin under Section 16 of the Surplus Property Act of 1944 to be used in

developing, improving, operating, or maintaining and operating a public airport. The parcel is not within the fenced boundary of the airport and is not needed for aviation purposes and the proceeds from the sale of the property will be deposited into the airport account and will be used for airport improvements and maintenance.

**DATES:** Comments must be received on or before April 18, 2014.

**ADDRESSES:** Send comments on this document to Mr. Peter Doyle at the Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057–3356, Telephone 425–227–2652.

**FOR FURTHER INFORMATION CONTACT:** Documents are available for review by appointment by contacting Ms. Kay Neumeyer, P.O. Box 61, Malin, Oregon 97632, Telephone 541–723–2021

Issued in Renton, Washington on March 7, 2014.

**Carol Suomi,**

*Seattle Airports District Manager.*

[FR Doc. 2014–06042 Filed 3–18–14; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2013–0138]**

### Reports, Forms and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration, U.S. Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 8, 2014 (79 FR 1426).

**DATES:** Comments must be submitted to OMB on or before April 18, 2014.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, OMB, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Alex Ansley, Recall Management Division (NVS–215), Room W46–412, NHTSA, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone: (202) 493–0481.

**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, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

*Title:* Names and Addresses of First Purchasers of Motor Vehicles.

*OMB Number:* 2127–0044.

*Type of Request:* Extension of a currently approved information collection.

*Affected Public:* Businesses or others for profit.

*Abstract:* Pursuant to 49 U.S.C. 30117(b), a manufacturer of a motor vehicle or tire (except a retreaded tire) must maintain a record of the name and address of the first purchasers of each vehicle or tire it produces and, to the extent prescribed by regulation of the Secretary, must maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces.

Vehicle manufacturers presently collect and maintain purchaser information for business reasons, such as for warranty claims processing and marketing, and experience with this statutory requirement has shown that manufacturers have retained this information in a manner sufficient to enable them to expeditiously notify vehicle purchasers in the case of a safety recall. Based on industry custom and this experience, NHTSA therefore determined that the regulation mentioned in 49 U.S.C. 30117(b) was unnecessary as to vehicle manufacturers. As an aside, the requirement for maintaining tire purchaser information are contained in 49 CFR part 574, Tire Identification and Recordkeeping, and the burden of that information collection is not part of this information collection.

*Estimated annual burden:* Zero. As a practical matter, vehicle manufacturers are presently collecting from their dealers and then maintaining first purchaser information for their own commercial reasons. Therefore, the statutory requirement does not impose any additional burden.

*Number of respondents:* We estimate that there are roughly 1,000 manufacturers of motor vehicles that collect and keep first purchaser information.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: March 13, 2014.

**Jennifer T. Timian,**

*Chief, Recall Management Division.*

[FR Doc. 2014–05990 Filed 3–18–14; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2011–0126]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 19, 2012 (77 FR 75255).

**DATES:** Comments must be submitted on or before April 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Kil-Jae Hong, NHTSA, 1200 New Jersey Avenue SE., W52–232, NPO–520, Washington, DC 20590. Ms. Hong's telephone number is (202) 493–0524 and email address is *kil-jae.hong@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## National Highway Traffic Safety Administration

*Title:* 49 CFR 575—Consumer Information Regulations (sections 103 and 105) Qualitative Research.

*OMB Number:* Not Assigned.

*Type of Request:* Request for public comment on collection of information request.

Abstract: The Energy Independence and Security Act of 2007, enacted in December 2007, included a requirement that the National Highway Traffic Safety Administration (NHTSA) develop a consumer information and education campaign to improve consumer understanding of automobile performance with regard to fuel economy, Greenhouse Gas emissions and other pollutant emissions; of automobile use of alternative fuels; and of thermal management technologies used on automobiles to save fuel. A critical step in developing the consumer education program is to conduct proper market research to understand consumers' knowledge surrounding these issues, evaluate potential consumer-facing messages in terms of clarity and understand the communications channels through which these messages should be presented. The research will allow NHTSA to refine messaging to enhance comprehension and usefulness and will guide the development of an effective communications plan and education program. NHTSA proposes a multi-phased research project to gather the data and apply analyses and results from the project to develop the consumer information program and education campaign materials.

*Affected Public:* Passenger vehicle consumers.

*Estimated Total Annual Burden:* 108 hours.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 13, 2014.

**John Donaldson,**

*Senior Associate Administrator (Acting), Policy and Operations.*

[FR Doc. 2014–05964 Filed 3–18–14; 8:45 am]

**BILLING CODE 4910–59–P**

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# DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Form 1097–BTC

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1097–BTC, Bond Tax Credit.

**DATES:** Written comments should be received on or before May 19, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Allan.M.Hopkins@irs.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Bond Tax Credit.

*OMB Number:* 1545–2197.

*Form Number:* Form 1097–BTC.

*Abstract:* Bond tax credits distributed by holders and issuers of tax credit bonds will be reported on this form. The form will be sent to taxpayers that received the distribution.

*Current Actions:* The paperwork burden associated with this form was recalculated.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 212.

*Estimated Time per Respondent:* 19 minutes.

*Estimated Total Annual Burden Hours:* 67.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: March 13, 2014.

**Allan Hopkins,**

*Tax Analyst.*

[FR Doc. 2014–06074 Filed 3–18–14; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Information Collection; Comment Request

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before May 19, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or recordkeeping requirement number, and OMB number (if any) in your comment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

*We invite comments on:* (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Currently, the IRS is seeking comments concerning the following forms, and reporting and recordkeeping requirements:

*Title:* Guidance under Section 664(c) Regarding the Effect of Unrelated Business Taxable Income on Charitable Remainder Trusts.

*OMB Number:* 1545–2101.

*Regulation Project Number:* TD 9403.

*Abstract:* This document provides guidance under Internal Revenue Code section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts. The regulations reflect the changes made to section 664(c) by section 424(a) and (b) of the Tax Relief and Health Care Act of 2006. The regulations affect charitable remainder trusts that have UBTI in taxable years beginning after December 31, 2006.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time per Respondent:* .5 hour.

*Estimated Total Annual Burden Hours:* 50.

*Title:* Definition of an S Corporation.

*OMB Number:* 1545–0731.

*Regulation Project Number:* T.D. 8600.

*Abstract:* This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 136(d)(2), the refusal to consent to the election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 2,010.

*Estimated Time per Respondent:* .5 hour.

*Estimated Total Annual Burden Hours:* 1,005.

*Title:* Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with section 409(a) in Operation.

*OMB Number:* 1545–2086.

*Notice Number:* Notice 2008–113.

*Abstract:* This notice sets forth the procedures to be followed by service recipients and service providers in order to correct certain operational failures of a nonqualified deferred compensation plan to comply with section 409A(a). It also describes the types of operational failures that can be corrected under the notice.

*Current Actions:* Notice 2008–113 is modified by Notice 2010–6 and Notice 2010–80. This collection is also being submitted for renewal purposes.

*Type of Review:* This is an extension of a currently approved collection.

*Affected Public:* Business or other for-profit institutions, not-for-profit institutions, and individuals or households.

*Estimated Number of Respondents:* 10,000.

*Estimated Average Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: March 12, 2014.

**Christie A. Preston,**

*IRS Reports Clearance Officer.*

[FR Doc. 2014–05991 Filed 3–18–14; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

Vol. 79 Wednesday,

No. 53 March 19, 2014


Part II

## Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 218**

**[Docket 140211133–4133–01]**

**RIN 0648–BD69**

## Takes of Marine Mammals Incidental to Specified Activities; U.S. Navy Training and Testing Activities in the Mariana Islands Training and Testing Study Area

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

**ACTION:** Proposed rule; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to the training and testing activities conducted in the Mariana Islands Training and Testing (MITT) study area from March 2015 through March 2020. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations and subsequent Letter of Authorization (LOA) to the Navy to incidentally harass marine mammals.

**DATES:** Comments and information must be received no later than May 5, 2014.

**ADDRESSES:** You may submit comments, identified by 0648–BD69, by either of the following methods:

- *Electronic submissions:* submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Jolie Harrison, Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

An electronic copy of the Navy's application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy's Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS/OEIS) for MITT was made available to the public on September 13, 2013 (78 FR 56682) and may also be viewed at *http://www.mitt-eis.com.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA): ''(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].''

### Summary of Request

On April 22, 2013, NMFS received an application from the Navy requesting an LOA for the take of 26 species of marine mammals incidental to Navy training and testing activities to be conducted in the MITT Study Area over 5 years. The Navy is requesting regulations that would establish a process for authorizing take, via one 5-year LOA, of marine mammals for training and testing activities, proposed to be conducted from 2015 through 2020. The Study Area includes the existing Mariana Islands Range Complex and surrounding seas, a transit corridor between the Mariana Islands and the Navy's Hawaii Range Complex, and Navy pierside locations where sonar maintenance or testing may occur (see Figure 2–1 of the Navy's application for a map of the MITT Study Area). The proposed activities are classified as military readiness activities. Marine mammals present in the Study Area may be exposed to sound from active sonar and underwater detonations. In addition, incidental takes of marine mammals may occur from ship strikes. The Navy is requesting authorization to take 26 marine mammal species by Level B (behavioral) harassment and 13 marine mammal species by Level A harassment (injury) or mortality.

The Navy's application and the MITT DEIS/OEIS contain proposed acoustic thresholds that were used to evaluate the Navy's Atlantic Fleet Training and Testing and Hawaii-Southern California Training and Testing activities. The revised thresholds are based on evaluation of recent scientific studies; a detailed explanation of how they were derived is provided in the MITT DEIS/OEIS' Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report. NMFS is currently updating and revising all of its acoustic thresholds. Until that process is complete, NMFS will continue its long-standing practice of considering specific modifications to the acoustic thresholds currently employed for incidental take authorizations only after providing the

public with an opportunity for review and comment.

**Background of Request**

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Section 5062 of Title 10 of the United States Code directs the Chief of Naval Operations to train all military forces for combat. The Chief of Naval Operations meets that direction, in part, by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas (OPAREAs) and airspace where they can develop and maintain skills for wartime missions and conduct research, development, testing, and evaluation (RDT&E) of naval systems.

The Navy proposes to continue conducting training and testing activities within the MITT Study Area, which have been ongoing for decades. Most of these activities were last analyzed in the Mariana Island Range Complex (MIRC) EIS/OEIS (U.S. Department of the Navy, 2010). This document, among others, and its associated MMPA regulations and authorizations, describe the baseline of training and testing activities currently conducted in the Study Area. The tempo and types of training and testing activities have fluctuated due to changing requirements; new technologies; the dynamic nature of international events; advances in warfighting doctrine and procedures; and changes in basing locations for ships, aircraft, and personnel. Such developments influence the frequency, duration, intensity, and location of required training and testing activities. To meet these requirements, the Navy is proposing an increase in the number of events/activities and ordnance for training and testing purposes. The Navy's LOA request covers training and testing activities that would occur for a 5-year period following the expiration of the current MMPA authorizations. The Navy has also prepared a DEIS/OEIS analyzing the effects on the human environment of implementing their preferred alternative (among others).

**Description of the Specified Activity**

The Navy is requesting authorization to take marine mammals incidental to conducting training and testing activities. The Navy has determined that sonar use, underwater detonations, and ship strike are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment. Detailed descriptions of these activities are provided in the MITT DEIS/OEIS and LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*) and are summarized here.

*Overview of Training Activities*

The Navy, U.S. Air Force, U.S. Marine Corps, and U.S. Coast Guard routinely train in the MITT Study Area in preparation for national defense missions. Training activities are categorized into eight functional warfare areas (anti-air warfare; amphibious warfare; strike warfare; anti-surface warfare; anti-submarine warfare; electronic warfare; mine warfare; and naval special warfare). The Navy determined that the following stressors used in these warfare areas are most likely to result in impacts on marine mammals:

- Anti-surface warfare (underwater detonations)
- Anti-submarine warfare (active sonar, underwater detonations)
- Mine warfare (active sonar, underwater detonations)
- Naval special warfare (underwater detonations)

Additionally, some activities described as Major Training Activities in the DEIS/OEIS and other activities are included in the analysis. The Navy's activities in amphibious warfare, anti-air warfare, strike warfare, and electronic warfare do not involve stressors that could result in harassment of marine mammals. Therefore, these activities are not discussed further. The analysis and rationale for excluding these warfare areas is contained in the DEIS/OEIS.

*Anti-surface Warfare*—The mission of anti-surface warfare is to defend against enemy ships or boats. When conducting anti-surface warfare, aircraft use cannons, missiles, or other precision-guided munitions; ships use torpedoes, naval guns, and surface-to-surface missiles; and submarines use torpedoes or submarine-launched, anti-ship cruise missiles. Anti-surface warfare training includes surface-to-surface gunnery and missile exercises, air-to-surface gunnery and missile exercises, and submarine missile or exercise torpedo launch events.

*Anti-submarine Warfare*—The mission of anti-submarine warfare is to locate, neutralize, and defeat hostile submarine threats to surface forces. Anti-submarine warfare is based on the principle of a layered defense of surveillance and attack aircraft, ships, and submarines all searching for hostile submarines. These forces operate together or independently to gain early warning and detection, and to localize, track, target, and attack hostile submarine threats. Anti-submarine warfare training addresses basic skills such as detection and classification of submarines, distinguishing between sounds made by enemy submarines and those of friendly submarines, ships, and marine life. More advanced, integrated anti-submarine warfare training exercises are conducted in coordinated, at-sea training events involving submarines, ships, and aircraft. This training integrates the full spectrum of anti-submarine warfare from detecting and tracking a submarine to attacking a target using either exercise torpedoes or simulated weapons.

*Mine Warfare*—The mission of mine warfare is to detect, and avoid or neutralize mines to protect Navy ships and submarines and to maintain free access to ports and shipping lanes. Mine warfare also includes offensive mine laying to gain control or deny the enemy access to sea space. Naval mines can be laid by ships, submarines, or aircraft. Mine warfare training includes exercises in which ships, aircraft, submarines, underwater vehicles, or marine mammal detection systems search for mines. Certain personnel train to destroy or disable mines by attaching and detonating underwater explosives to simulated mines. Other neutralization techniques involve impacting the mine with a bullet-like projectile or intentionally triggering the mine to detonate.

*Naval Special Warfare*—The mission of naval special warfare is to conduct unconventional warfare, direct action, combat terrorism, special reconnaissance, information warfare, security assistance, counter-drug operations, and recovery of personnel from hostile situations. Naval special warfare operations are highly specialized and require continual and intense training. Naval special warfare units are required to utilize a combination of specialized training, equipment, and tactics, including insertion and extraction operations using parachutes, submerged vehicles, rubber boats, and helicopters; boat-to-shore and boat-to-boat gunnery; underwater demolition training; reconnaissance; and small arms training.

*Major Training Activities*—Major training activities involve multiple ships, aircraft, and submarines in a multi-day exercise. Different branches of the U.S. military participate in joint planning and execution efforts as well as military training activities at sea, in the air, and ashore. More than 8,000 personnel may participate and could include the combined assets of a Carrier

Strike Group and Expeditionary Strike Group, Marine Expeditionary Units, Army Infantry Units, and Air Force aircraft. One example of this coordinated activity is the Joint Multi Strike Group Exercise, a 10-day exercise in which up to three carrier strike groups conduct training exercises simultaneously.

*Other Activities*—Surface ship and submarine sonar maintenance, described under Other Activities in the DEIS/OEIS, involve in-port and at-sea maintenance of sonar systems.

*Overview of Testing Activities*

The Navy researches, develops, tests, and evaluates new platforms, systems, and technologies. Many tests are conducted in realistic conditions at sea, and can range in scale from testing new software to operating portable devices to conducting tests of live weapons to ensure they function as intended. Testing activities may occur independently of or in conjunction with training activities. Many testing activities are conducted similarly to Navy training activities and are also categorized under one of the primary mission areas. Other testing activities are unique and are described within their specific testing categories. The Navy determined that stressors used during the following testing activities are most likely to result in impacts on marine mammals:

- Naval Air Systems Command (NAVAIR) Testing
  - Anti-surface warfare testing (underwater detonations)
  - Anti-submarine warfare testing (active sonar, underwater detonations)
- Naval Sea Systems command (NAVSEA) Testing
  - New ship construction (active sonar, underwater detonations)
  - Life cycle activities (active sonar, underwater detonations)
  - Anti-surface warfare/anti-submarine warfare testing (active sonar, underwater detonations)
  - Ship protection systems and swimmer defense testing (active sonar)
- Office of Naval Research (ONR) and Naval Research Laboratory (NRL) Testing
  - ONR/NRL research, development, test, and evaluation (active sonar)

Other Navy testing activities do not involve stressors that could result in marine mammal harassment. Therefore, these activities are not discussed further.

*Naval Air Systems Command Testing (NAVAIR)*—NAVAIR events include testing of new aircraft platforms, weapons, and systems before delivery to the fleet for training activities. In general, NAVAIR conducts its testing activities the same way the fleet conducts its training activities. However, NAVAIR testing activities may occur in different locations than equivalent fleet training activities and testing of a particular system may differ slightly from the way the fleet trains with the same system.

Anti-surface Warfare Testing: Anti-surface warfare testing includes air-to-surface gunnery, missile, and rocket exercises. Testing is required to ensure the equipment is fully functional for defense from surface threats. Testing may be conducted on new guns or run rounds, missiles, rockets, and aircraft, and also in support of scientific research to assess new and emerging technologies. Testing events are often integrated into training activities and in most cases the systems are used in the same manner in which they are used for fleet training activities.

Anti-submarine Warfare Testing: Anti-submarine warfare testing addresses basic skills such as detection and classification of submarines, distinguishing between sounds made by enemy submarines and those of friendly submarines, ships, and marine life. More advanced, integrated anti-submarine warfare testing is conducted in coordinated, at-sea training events involving submarines, ships, and aircraft. This testing integrates the full spectrum of anti-submarine warfare from detecting and tracking a submarine to attacking a target using various torpedoes and weapons.

*Naval Sea Systems Command Testing (NAVSEA)*—NAVSEA testing activities are aligned with its mission of new ship construction, life cycle support, and other weapon systems development and testing.

New Ship Construction Activities: Ship construction activities include testing of ship systems and developmental and operational test and evaluation programs for new technologies and systems. At-sea testing of systems aboard a ship may include sonar, acoustic countermeasures, radars, and radio equipment. At-sea test firing of shipboard weapon systems, including guns, torpedoes, and missiles, are also conducted.

Life Cycle Activities: Testing activities are conducted throughout the life of a Navy ship to verify performance and mission capabilities. Sonar system testing occurs pierside during maintenance, repair, and overhaul availabilities, and at sea immediately following most major overhaul periods. Radar cross signature testing of surface ships is conducted on new vessels and periodically throughout a ship's life to measure how detectable the ship is by radar. Electromagnetic measurements of off-board electromagnetic signature are also conducted for submarines, ships, and surface craft periodically.

Other Weapon Systems Development and Testing: Numerous test activities and technical evaluations, in support of NAVSEA's systems development mission, often occur with fleet activities within the Study Area. Tests within this category include anti-submarine and mine warfare tests using torpedoes, sonobuoys, and mine detection and neutralization systems. Swimmer detection systems are also tested pierside.

*Office of Naval Research and Naval Research Laboratory Testing (ONR and NRL)*—As the Navy's science and technology provider, ONR and NRL provide technology solutions for Navy and Marine Corps needs. ONR's mission is to plan, foster, and encourage scientific research in recognition of its paramount importance as related to the maintenance of future naval power, and the preservation of national security. Further, ONR manages the Navy's basic, applied, and advanced research to foster transition from science and technology to higher levels of research, development, test, and evaluation. The Ocean Battlespace Sensing Department explores science and technology in the areas of oceanographic and meteorological observations, modeling, and prediction in the battlespace environment; submarine detection and classification (anti-submarine warfare); and mine warfare applications for detecting and neutralizing mines in both the ocean and littoral environment. ONR events include research, development, test, and evaluation activities; surface processes acoustic communications experiments; shallow water acoustic communications experiments; sediment acoustics experiments; shallow water acoustic propagation experiments; and long range acoustic propagation experiments.

*Sonar, Ordnance, Targets, and Other Systems*

The Navy uses a variety of sensors, platforms, weapons, and other devices to meet its mission. Training and testing with these systems may introduce acoustic (sound) energy into the environment. This section describes and organizes sonar systems, ordnance, munitions, targets, and other systems to facilitate understanding of the activities in which these systems are used. Underwater sound is described as one of

two types for the purposes of the Navy's application: impulsive and non-impulsive. Underwater detonations of explosives and other percussive events are impulsive sounds. Sonar and other active acoustic systems are categorized as non-impulsive sound sources.

*Sonar and Other Non-impulsive Sources*—Modern sonar technology includes a variety of sonar sensor and processing systems. The simplest active sonar emits sound waves, or ''pings,'' sent out in multiple directions and the sound waves then reflect off of the target object in multiple directions. The sonar source calculates the time it takes for the reflected sound waves to return; this calculation determines the distance to the target object. More sophisticated active sonar systems emit a ping and then rapidly scan or listen to the sound waves in a specific area. This provides both distance to the target and directional information. Even more advanced sonar systems use multiple receivers to listen to echoes from several directions simultaneously and provide efficient detection of both direction and distance. The Navy rarely uses active sonar continuously throughout activities. When sonar is in use, the pings occur at intervals, referred to as a duty cycle, and the signals themselves are very short in duration. For example, sonar that emits a 1-second ping every 10 seconds has a 10-percent duty cycle. The Navy utilizes sonar systems and other acoustic sensors in support of a variety of mission requirements. Primary uses include the detection of and defense against submarines (anti-submarine warfare) and mines (mine warfare); safe navigation and effective communications; use of unmanned undersea vehicles; and oceanographic surveys.

*Ordnance and Munitions*—Most ordnance and munitions used during training and testing events fall into three basic categories: projectiles (such as gun rounds), missiles (including rockets), and bombs. Ordnance can be further defined by their net explosive weight, which considers the type and quantity of the explosive substance without the packaging, casings, bullets, etc. Net explosive weight (NEW) is the trinitrotoluene (TNT) equivalent of energetic material, which is the standard measure of strength of bombs and other explosives. For example, a 12.7-centimeter (cm) shell fired from a Navy gun is analyzed at about 9.5 pounds (lb) (4.3 kilograms (kg)) of NEW. The Navy also uses non-explosive ordnance in place of high explosive ordnance in many training and testing events. Non-explosive ordnance munitions look and perform similarly to high explosive ordnance, but lack the main explosive charge.

*Defense Countermeasures*—Naval forces depend on effective defensive countermeasures to protect themselves against missile and torpedo attack. Defensive countermeasures are devices designed to confuse, distract, and confound precision guided munitions. Defensive countermeasures analyzed in this LOA application include acoustic countermeasures, which are used by surface ships and submarines to defend against torpedo attack. Acoustic countermeasures are either released from ships and submarines, or towed at a distance behind the ship.

*Mine Warfare Systems*—The Navy divides mine warfare systems into two categories: mine detection and mine neutralization. Mine detection systems are used to locate, classify, and map suspected mines. Once located, the mines can either be neutralized or avoided. The Navy analyzed the following mine detection systems for potential impacts to marine mammals:

- Towed or hull-mounted mine detection systems. These detection systems use acoustic, laser, and video sensors to locate and classify mines. Fixed and rotary wing aircraft platforms, ships, and unmanned vehicles are used for towed systems, which can rapidly assess large areas.
- Unmanned/remotely operated vehicles. These vehicles use acoustic, laser, and video sensors to locate and classify mines. Unmanned/remotely operated vehicles provide unique mine warfare capabilities in nearshore littoral areas, surf zones, ports, and channels.

*Mine Neutralization Systems*—Mine neutralization systems disrupt, disable, or detonate mines to clear ports and shipping lanes, as well as littoral, surf, and beach areas in support of naval amphibious operations. The Navy analyzed the following mine neutralization systems for potential impacts to marine mammals:

- Towed influence mine sweep systems. These systems use towed equipment that mimic a particular ship's magnetic and acoustic signature triggering the mine and causing it to explode.
- Unmanned/remotely operated mine neutralization systems. Surface ships and helicopters operate these systems, which place explosive charges near or directly against mines to destroy the mine.
- Diver emplaced explosive charges. Operating from small craft, divers put explosive charges near or on mines to destroy the mine or disrupt its ability to function.

*Classification of Non-Impulsive and Impulsive Sources Analyzed*

In order to better organize and facilitate the analysis of about 300 sources of underwater non-impulsive sound or impulsive energy, the Navy developed a series of source classifications, or source bins. This method of analysis provides the following benefits:

- Allows for new sources to be covered under existing authorizations, as long as those sources fall within the parameters of a ''bin;''
- Simplifies the data collection and reporting requirements anticipated under the MMPA;
- Ensures a conservative approach to all impact analysis because all sources in a single bin are modeled as the loudest source (e.g., lowest frequency, highest source level, longest duty cycle, or largest net explosive weight within that bin);
- Allows analysis to be conducted more efficiently, without compromising the results;
- Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total number and severity of marine mammal takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

A description of each source classification is provided in Tables 1 and 2. Non-impulsive sources are grouped into bins based on the frequency, source level when warranted, and how the source would be used. Impulsive bins are based on the net explosive weight of the munitions or explosive devices. The following factors further describe how non-impulsive sources are divided:

- Frequency of the non-impulsive source:
  - Low-frequency sources operate below 1 kilohertz (kHz)
  - Mid-frequency sources operate at or above 1 kHz, up to and including 10 kHz
  - High-frequency sources operate above 10 kHz, up to and including 100 kHz
  - Very high-frequency sources operate above 100, but below 200 kHz
- Source level of the non-impulsive source:
  - Greater than 160 decibels (dB), but less than 180 dB
  - Equal to 180 dB and up to 200 dB
  - Greater than 200 dB

How a sensor is used determines how the sensor's acoustic emissions are

analyzed. Factors to consider include pulse length (time source is on); beam pattern (whether sound is emitted as a narrow, focused beam, or, as with most explosives, in all directions); and duty cycle (how often a transmission occurs in a given time period during an event).

There are also non-impulsive sources with characteristics that are not anticipated to result in takes of marine mammals. These sources have low source levels, narrow beam widths, downward directed transmission, short pulse lengths, frequencies beyond known hearing ranges of marine mammals, or some combination of these factors. These sources generally have frequencies greater than 200 kHz and/or source levels less than 160 dB and are qualitatively analyzed in the MITT DEIS/OEIS.

TABLE 1—IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED

| Source class | Representative munitions | Net explosive weight (lbs) |
|---|---|---|
| E1 | Medium-caliber projectiles | 0.1–0.25 (45.4–113.4 g). |
| E2 | Medium-caliber projectiles | 0.26–0.5 (117.9–226.8 g). |
| E3 | Large-caliber projectiles | >0.5–2.5 (>226.8 g-1.1 kg). |
| E4 | Improved Extended Echo Ranging Sonobuoy | >2.5–5.0 (1.1–2.3 kg). |
| E5 | 5 in. (12.7 cm) projectiles | >5–10 (>2.3–4.5 kg). |
| E6 | 15 lb. (6.8 kg) shaped charge | >10–20 (>4.5–9.1 kg). |
| E8 | 250 lb. (113.4 kg) bomb | >60–100 (>27.2–45.4 kg). |
| E9 | 500 lb. (226.8 kg) bomb | >100–250 (>45.4–113.4 kg). |
| E10 | 1,000 lb. (453.6 kg) bomb | >250–500 (>113.4–226.8 kg). |
| E11 | 650 lb. (294.8 kg) mine | >500–650 (>226.8–294.8 kg). |
| E12 | 2,000 lb. (907.2 kg) bomb | >650–1,000 (>294.8–453.6 kg). |

TABLE 2—NON-IMPULSIVE TRAINING AND TESTING SOURCE CLASSES ANALYZED

| Source class category | Source class | Description |
|---|---|---|
| Low-Frequency (LF): Sources that produce low-frequency (less than 1 kilohertz [kHz]) signals. | LF4 | Low-frequency sources equal to 180 dB and up to 200 dB. |
| | LF5 | Low-frequency sources less than 180 dB. |
| | LF6 | Low-frequency sonar currently in development (e.g., anti-submarine warfare sonar associated with the Littoral Combat Ship). |
| Mid-Frequency (MF): Tactical and non-tactical sources that produce mid-frequency (1 to 10 kHz) signals. | MF1 | Active hull-mounted surface ship sonar (e.g., AN/SQS–53C and AN/SQS–60). |
| | MF2 | Active hull-mounted surface ship sonar (e.g., AN/SQS–56). |
| | MF3 | Active hull-mounted submarine sonar (e.g., AN/BQQ–10). |
| | MF4 | Active helicopter-deployed dipping sonar (e.g., AN/AQS–22 and AN/AQS–13). |
| | MF5 | Active acoustic sonobuoys (e.g., DICASS). |
| | MF6 | Active underwater sound signal devices (e.g., MK–84). |
| | MF8 | Active sources (greater than 200 dB) not otherwise binned. |
| | MF9 | Active sources (equal to 180 dB and up to 200 dB). |
| | MF10 | Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned. |
| | MF11 | Hull-mounted surface ship sonar with an active duty cycle greater than 80%. |
| | MF12 | High duty cycle—variable depth sonar. |
| High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce high-frequency (greater than 10 kHz but less than 200 kHz) signals. | HF1 | Active hull-mounted submarine sonar (e.g., AN/BQQ–10). |
| | HF4 | Active mine detection, classification, and neutralization sonar (e.g., AN/SQS–20). |
| | HF5 | Active sources (greater than 200 dB). |
| | HF6 | Active sources (equal to 180 dB and up to 200 dB). |
| Anti-Submarine Warfare (ASW): Tactical sources such as active sonobuoys and acoustic countermeasures systems used during ASW training and testing activities. | ASW1 | MF active Deep Water Active Distributed System (DWADS). |
| | ASW2 | MF active Multistatic Active Coherent (MAC) sonobuoy (e.g., AN/SSQ–125). |
| | ASW3 | MF active towed active acoustic countermeasure systems (e.g., AN/SLQ–25). |
| Torpedoes (TORP): Source classes associated with active acoustic signals produced by torpedoes. | TORP1 | Lightweight torpedo (e.g., MK–46, MK–54, or Anti-Torpedo Torpedo). |
| | TORP2 | Heavyweight torpedo (e.g., MK–48). |
| Acoustic Modems (M): Systems used to transmit data acoustically through water. | M3 | Mid-frequency acoustic modems (greater than 190 dB). |
| Swimmer Detection Sonar (SD): Systems used to detect divers and submerged swimmers. | SD1 | High-frequency sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security. |
| Airguns (AG) [1]: Underwater airguns are used during swimmer defense and diver deterrent training and testing activities. | AG | Up to 60 cubic inch airguns (e.g., Sercel Mini-G). |

[1] There are no Level A or Level B takes proposed from airguns.

**Proposed Action**

The Navy proposes to continue conducting training and testing activities within the MITT Study Area. The Navy has been conducting military readiness training and testing activities in the MITT Study Area for decades. Recently, these activities were analyzed in the 2010 MIRC EIS/OEIS and the 2012 MIRC Airspace Environmental Assessment. These documents, among others, and the associated MMPA regulations and authorizations, describe the baseline of training and testing activities currently conducted in the Study Area. The tempo and types of training and testing activities have fluctuated due to the introduction of new technologies; the dynamic nature of international events; advances in warfighting doctrine and procedures; and changes in basing locations for ships, aircraft, and personnel (force structure changes). Such developments have influenced the frequency, duration, intensity, and location of required training and testing activities. To meet these requirements, the Navy is proposing an increase in the number of events/activities and ordnance for training and testing purposes.

*Training and Testing*

The Navy proposes to conduct training and testing activities in the Study Area as described in Tables 3 and 4. Detailed information about each proposed activity (stressor, training or testing event, description, sound source, duration, and geographic location) can be found in the MITT DEIS/OEIS. NMFS used the detailed information in the MITT DEIS/OEIS to help analyze the potential impacts to marine mammals. Table 3 describes the annual number of impulsive source detonations during training and testing activities within the MITT Study Area, and Table 4 describes the annual number of hours or items of non-impulsive sources used during training and testing activities with within the MITT Study Area. The Navy's proposed action is an adjustment to existing baseline activities to accommodate the following:

- Force structure changes including the relocation of ships, aircraft, and personnel;
- Planned new aircraft platforms, new vessel classes, and new weapons systems;
- Ongoing activities that were not addressed in previous documentation; and
- The addition of Maritime Homeland Defense/Security Mine Countermeasures Exercise, as described in Table 2.4–1 of the MITT DEIS/OEIS;
- The establishment of new danger zones or safety zones for site-specific military ordnance training with surface danger zones or hazard area extending over nearshore waters; and
- An increase in net explosive weight for explosives from 10 lb to 20 lb at Agat Bay Mine Neutralization Site and Outer Apra Harbor Underwater Detonation Site.

In addition, the proposed action includes the expansion of the Study Area boundaries and adjustments to location, type, and tempo of training activities.

TABLE 3—PROPOSED ANNUAL NUMBER OF IMPULSIVE SOURCE DETONATIONS DURING TRAINING AND TESTING ACTIVITIES IN THE STUDY AREA

| Explosive class | Net explosive weight (NEW) | Annual in-water etonations |
|---|---|---|
| E1 | (0.1 lb.–0.25 lb.) | 10,140 |
| E2 | (0.26 lb.–0.5 lb.) | 106 |
| E3 | (>0.5 lb.–2.5 lb.) | 932 |
| E4 | (>2.5 lb.–5 lb.) | 420 |
| E5 | (>5 lb.–10 lb.) | 684 |
| E6 | (>10 lb.–20 lb.) | 76 |
| E8 | (>60 lb.–100 lb.) | 16 |
| E9 | (>100 lb.–250 lb.) | 4 |
| E10 | (>250 lb.–500 lb.) | 12 |
| E11 | (>500 lb.–650 lb.) | 6 |
| E12 | (>650 lb.–2,000 lb.) | 184 |

TABLE 4—PROPOSED ANNUAL HOURS OR ITEMS OF NON-IMPULSIVE SOURCES USED DURING TRAINING AND TESTING ACTIVITIES WITHIN THE STUDY AREA

| Source class category | Source class | Annual use |
|---|---|---|
| Low-Frequency (LF): Sources that produce signals less than 1 kHz | LF4 | 123 hours. |
| | LF5 | 11 hours. |
| | LF6 | 40 hours. |
| Mid-Frequency (MF): Tactical and non-tactical sources from 1 to 10 kHz | MF1 | 1,872 hours. |
| | MF2 | 625 hours. |
| | MF3 | 192 hours. |
| | MF4 | 214 hours. |
| | MF5 | 2,588 items. |
| | MF6 | 33 items. |
| | MF8 | 123 hours. |
| | MF9 | 47 hours. |
| | MF10 | 231 hours. |
| | MF11 | 324 hours. |
| | MF12 | 656 hours. |
| High-Frequency (HF) and Very High-Frequency (VHF): Tactical and non-tactical sources that produce signals greater than 10 kHz but less than 200 kHz. | HF1 | 113 hours. |
| | HF4 | 1,060 hours. |
| | HF5 | 336 hours. |
| | HF6 | 1,173 hours. |
| Anti-Submarine Warfare (ASW): Tactical sources used during anti-submarine warfare training and testing activities. | ASW1 | 144 hours. |
| | ASW2 | 660 items. |
| | ASW3 | 3,935 hours. |
| | ASW4 | 32 items. |
| Torpedoes (TORP): Source classes associated with active acoustic signals produced by torpedoes | TORP1 | 115 items. |
| | TORP2 | 62 items. |
| Acoustic Modems (M): Transmit data acoustically through the water | M3 | 112 hours. |
| Swimmer Detection Sonar (SD): Used to detect divers and submerged swimmers | SD1 | 2,341 hours. |

*Vessels*

Vessels used as part of the proposed action include ships, submarines, and boats ranging in size from small, 5-m Rigid Hull Inflatable Boats to 333-m long aircraft carriers. Representative Navy vessel types, lengths, and speeds used in both training and testing activities are shown in Table 5. While these speeds are representative, some vessels operate outside of these speeds due to unique training or safety requirements for a given event. Examples include increased speeds needed for flight operations, full speed runs to test engineering equipment, time critical positioning needs, etc. Examples of decreased speeds include speeds less than 5 knots or completely stopped for launching small boats, certain tactical maneuvers, target launch or retrievals, etc.

The number of Navy vessels in the Study Area varies based on training and testing schedules. Most activities include either one or two vessels, with an average of one vessel per activity, and last from a few hours up to two weeks. Multiple ships, however, can be involved with major training events, although ships can often operate for extended periods beyond the horizon and out of visual sight from each other. Surface and sub-surface vessel operations in the Study Area may result in marine mammal strikes.

TABLE 5—TYPICAL NAVY BOAT AND VESSEL TYPES WITH LENGTH GREATER THAN 18 METERS USED WITHIN THE MITT STUDY AREA

| Vessel type (>18 m) | Example(s) (specifications in meters (m) for length, metric tons (mt) for mass, and knots for speed) | Typical operating speed (knots) |
|---|---|---|
| Aircraft Carrier | Aircraft Carrier (CVN) length: 333 m beam: 41 m draft: 12 m displacement: 81,284 mt max. speed: 30+ knots. | 10 to 15. |
| Surface Combatants | Cruiser (CG) length: 173 m beam: 17 m draft: 10 m displacement: 9,754 mt max. speed: 30+ knots. | 10 to 15. |
| | Destroyer (DDG) length: 155 m beam: 18 m draft: 9 m displacement: 9,648 mt max. speed: 30+ knots. | |
| | Frigate (FFG) length: 136 m beam: 14 m draft: 7 m displacement: 4,166 mt max. speed: 30+ knots. | |
| | Littoral Combat Ship (LCS) length: 115 m beam: 18 m draft: 4 m displacement: 3,000 mt max. speed: 40+ knots. | |
| Amphibious Warfare Ships | Amphibious Assault Ship (LHA, LHD) length: 253 m beam: 32 m draft: 8 m displacement: 42,442 mt max. speed: 20+ knots. | 10 to 15. |
| | Amphibious Transport Dock (LPD) length: 208 m beam: 32 m draft: 7 m displacement: 25,997 mt max. speed: 20+ knots. | |
| | Dock Landing Ship (LSD) length: 186 m beam: 26 m draft: 6 m displacement: 16,976 mt max. speed: 20+ knots. | |
| Mine Warship Ship | Mine Countermeasures Ship (MCM) length: 68 m beam: 12 m draft: 4 m displacement: 1,333 max. speed: 14 knots. | 5 to 8. |
| Submarines | Attack Submarine (SSN) length: 115 m beam: 12 m draft: 9 m displacement: 12,353 mt max. speed: 20+ knots. | 8 to 13. |
| | Guided Missile Submarine (SSGN) length: 171 m beam: 13 m draft: 12 m displacement: 19,000 mt max. speed: 20+ knots. | |
| Combat Logistics Force Ships [1] | Fast Combat Support Ship (T–AOE) length: 230 m beam: 33 m draft: 12 m displacement: 49,583 max. speed: 25 knots. | 8 to 12. |
| | Dry Cargo/Ammunition Ship (T–AKE) length: 210 m beam: 32 m draft: 9 m displacement: 41,658 mt max speed: 20 knots. | |
| | Fleet Replenishment Oilers (T–AO) length: 206 m beam: 30 m draft: 11 displacement: 42,674 mt max. speed: 20 knots. | |
| | Fleet Ocean Tugs (T–ATF) length: 69 m beam: 13 m draft: 5 m displacement: 2,297 max. speed: 14 knots. | |
| | Joint High Speed Vessel (JHSV) [2] length: 103 m beam; 28.5 m draft; 4.57 m displacement; 2,362 mt max speed: 40 knots. | |
| Support Craft/Other | Landing Craft, Utility (LCU) length: 41m beam: 9 m draft: 2 m displacement: 381 mt max. speed: 11 knots. | 3 to 5. |
| | Landing Craft, Mechanized (LCM) length: 23 m beam: 6 m draft: 1 m displacement: 107 mt max. speed: 11 knots. | |
| Support Craft/Other Specialized High Speed. | MK V Special Operations Craft length: 25 m beam: 5 m displacement: 52 mt max. speed: 50 knots. | Variable. |

[1] CLF vessels are not permanently homeported in the Marianas, but are used for various fleet support and training support events in the Study Area.

[2] Typical operating speed of the Joint High Speed Vessel is 25–32 knots.

**Dates and Specified Geographic Region**

The MITT Study Area is comprised of the established ranges, operating areas, and special use airspace in the region of the Mariana Islands that are part of the MIRC, its surrounding seas, and a transit corridor between the Mariana Islands and the Hawaii Range Complex. The defined Study Area has expanded beyond the areas included in previous Navy authorizations to include transit routes and pierside locations. This expansion is not an increase in the Navy's training and testing area, but rather an increase in the area to be analyzed (i.e., not previously analyzed) under an incidental take authorization in support of the MITT EIS/OEIS. The MIRC, like all Navy range complexes, is an organized and designated set of specifically bounded geographic areas, which includes a water component (above and below the surface), airspace, and sometimes a land component.

Operating areas (OPAREAs) and special use airspace are established within each range complex. These designations are further described in Chapter 2 of the Navy's LOA application.

*Mariana Islands Range Complex (MIRC)*—The MIRC includes land training areas, ocean surface areas, and subsurface areas. These areas extend from the waters south of Guam to north of Pagan (Commonwealth of the Northern Mariana Islands), and from the Pacific Ocean east of the Mariana Islands to the Philippine Sea to the west, encompassing 501, 873 square nautical miles of open ocean. More detailed information on the MIRC, including maps, is provided in Chapter 2 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

*Transit Corridor*—A transit corridor outside the bounds of the MIRC is also included in the Navy's request. Vessel transit corridors are the routes typically used by Navy assets to traverse from one area to another. This transit corridor is important to the Navy in that it provides adequate air, sea, and undersea space in which ships and aircraft can conduct training and some sonar maintenance and testing while en route between the Mariana Islands and Hawaii. The transit corridor is defined by the shortest distance between the MIRC and the Hawaii Range Complex. While in transit, vessels and aircraft would, at times, conduct basic and routine unit level training such as gunnery and sonar training as long as the training does not interfere with the primary objective of reaching their intended destination. Ships also conduct sonar maintenance, which includes active sonar transmissions.

*Pierside Locations*—The Study Area also includes pierside locations in the Apra Harbor Naval Complex where surface ship and submarine sonar maintenance testing occur. These pierside locations include channels and routes to and from the Navy port in the Apra Harbor Naval Complex, and associated wharves and facilities within the Navy port and shipyard.

Description of Marine Mammals in the Area of the Specified Activity

Twenty-six marine mammal species may occur in the Study Area, including seven mysticetes (baleen whales) and 19 odontocetes (dolphins and toothed whales). These species and their numbers are presented in Table 6 and relevant information on their status, distribution, and seasonal distribution (when applicable) is presented in Chapter 3 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

Species that may have once inhabited and transited the Study Area, but have not been sighted in recent years, include the North Pacific right whale (*Eubalaena japonica*), western subpopulation of gray whale (*Eschrichtius robustus*), short-beaked common dolphin (*Delphinus delphis*), Indo-Pacific bottlenose dolphin (*Tursiops aduncus*), Hawaiian monk seal (*Monachus schauinslandi*), northern elephant seal (*Mirounga angustirostris*), and dugong (*Dugong dugon*). These species are not expected to be exposed to or affected by any project activities and, therefore, are not discussed further.

TABLE 6—MARINE MAMMALS WITH POSSIBLE OR CONFIRMED PRESENCE WITHIN THE STUDY AREA

| Common name | Scientific name | Stock | Stock abundance | Study area abundance | Occurrence in study area | ESA/MMPA status |
|---|---|---|---|---|---|---|
| Humpback whale | *Megaptera novaeangliae* | Western North Pacific | 21,808 | 36 | Rare in summer months; regular in winter months. | Endangered/Depleted. |
| Blue whale | *Balaenoptera musculus* | Central North Pacific | N/A | 842 | Rare | Endangered/Depleted. |
| Fin whale | *Balaenoptera physalus* | | N/A | 359 | Rare | Endangered/Depleted. |
| Sei whale | *Balaenoptera borealis* | | N/A | 166 | Rare in summer months; regular in winter months. | Endangered/Depleted. |
| Bryde's whale | *Balaenoptera edeni* | | N/A | 233 | Regular | |
| Minke whale | *Balaenoptera acutorostrata.* | | N/A | 226 | Rare in summer months; regular in winter months. | |
| Omura's whale | *Balaenoptera omurai* | | N/A | N/A | Rare | |
| Sperm whale | *Physeter macrocephalus* | California, Oregon, & Washington. | 971 | 705 | Regular | Endangered/Depleted. |
| Pygmy sperm whale | *Kogia breviceps* | | N/A | N/A | Regular | |
| Dwarf sperm whale | *Kogia sima* | | N/A | N/A | Regular | |
| Killer whale | *Orcinus orca* | | N/A | 30 | Regular | |
| False killer whale | *Pseudorca crassidens* | | N/A | N/A | Regular | |
| Pygmy killer whale | *Feresa attenuata* | | 956 | 78 | Regular | |
| Short-finned pilot whale | *Globicephala macrorhynchus.* | Japanese southern stock? | 760 | 118 | Regular | |
| Melon-headed whale | *Peponocephala electra* | | N/A | 2,455 | Regular | |
| Bottlenose dolphin | *Tursiops truncatus* | | N/A | 323 | Regular | |
| Pantropical spotted dolphin. | *Stenella attenuata* | | N/A | 12,981 | Regular | |
| Striped dolphin | *Stenella coerulealba* | | N/A | 3,531 | Regular | |
| Spinner dolphin | *Stenella longirostris (Stenella longirostris longirostris).* | | N/A | N/A | Regular | |
| Rough-toothed dolphin | *Steno bredanensis* | | N/A | N/A | Regular | |
| Fraser's dolphin | *Lagenodelphis hosei* | | N/A | N/A | Regular | |
| Risso's dolphins | *Grampus griseus* | | N/A | N/A | Regular | |
| Cuvier's beaked whale | *Ziphius cavirostris* | | N/A | N/A | Regular | |
| Blainville's beaked whale | *Mesoplodon densirostris* | | N/A | N/A | Regular | |
| Longman's beaked whale | *Indopacetus pacificus* | | N/A | N/A | Regular | |
| Gingo-toothed beaked whale. | *Mesoplodon gindgodens* | | N/A | N/A | Rare | |

Information on the status, distribution, abundance, and vocalizations of marine mammal species in the Study Area may be viewed in Chapter 4 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). Further information on the general biology and ecology of marine mammals is included in the MITT Draft EIS/OEIS. In addition, NMFS publishes annual stock assessment reports for marine mammals, including some stocks that occur within the Study Area (*http://www.nmfs.noaa.gov/pr/species/mammals*).

**Marine Mammal Hearing and Vocalizations**

Cetaceans have an auditory anatomy that follows the basic mammalian pattern, with some changes to adapt to the demands of hearing underwater. The typical mammalian ear is divided into an outer ear, middle ear, and inner ear. The outer ear is separated from the inner ear by a tympanic membrane, or eardrum. In terrestrial mammals, the outer ear, eardrum, and middle ear transmit airborne sound to the inner ear, where the sound waves are propagated through the cochlear fluid. Since the impedance of water is close to that of the tissues of a cetacean, the outer ear is not required to transduce sound energy as it does when sound waves travel from air to fluid (inner ear). Sound waves traveling through the inner ear cause the basilar membrane to vibrate. Specialized cells, called hair cells, respond to the vibration and produce nerve pulses that are transmitted to the central nervous system. Acoustic energy causes the basilar membrane in the cochlea to vibrate. Sensory cells at different positions along the basilar membrane are excited by different frequencies of sound (Pickles, 1998).

Marine mammal vocalizations often extend both above and below the range of human hearing; vocalizations with frequencies lower than 20 Hz are labeled as infrasonic and those higher than 20 kHz as ultrasonic (National Research Council (NRC), 2003; Figure 4–1). Measured data on the hearing abilities of cetaceans are sparse, particularly for the larger cetaceans such as the baleen whales. The auditory thresholds of some of the smaller odontocetes have been determined in captivity. It is generally believed that cetaceans should at least be sensitive to the frequencies of their own vocalizations. Comparisons of the anatomy of cetacean inner ears and models of the structural properties and the response to vibrations of the ear's components in different species provide an indication of likely sensitivity to various sound frequencies. The ears of small toothed whales are optimized for receiving high-frequency sound, while baleen whale inner ears are best in low to infrasonic frequencies (Ketten, 1992; 1997; 1998).

Baleen whale vocalizations are composed primarily of frequencies below 1 kHz, and some contain fundamental frequencies as low as 16 Hz (Watkins *et al.,* 1987; Richardson *et al.,* 1995; Rivers, 1997; Moore *et al.,* 1998; Stafford *et al.,* 1999; Wartzok and Ketten, 1999) but can have harmonics that can extend as high as 24 kHz (humpback whale; Au *et al.,* 2006). Clark and Ellison (2004) suggested that baleen whales use low-frequency sounds not only for long-range communication, but also as a simple form of echo ranging, using echoes to navigate and orient relative to physical features of the ocean. Although there is apparently much variation, the source levels of most baleen whale vocalizations lie in the range of 150–190 dB re 1 μPa at 1 m. Low-frequency vocalizations made by baleen whales and their corresponding auditory anatomy suggest that they have good low-frequency hearing (Ketten, 2000; Houser *et al.,* 2001; Parks *et al.,* 2007), although specific data on sensitivity, frequency or intensity discrimination, or localization abilities are lacking. Marine mammals, like all mammals, have typical U-shaped audiograms with frequencies on the edge of the auditory range being less sensitive (high threshold) compared to those in the middle of the auditory range where there is greater sensitivity (low threshold) (Fay, 1988).

The toothed whales produce a wide variety of sounds, which include species-specific broadband ''clicks'' with peak energy between 10 and 200 kHz, individually variable ''burst pulse'' click trains, and constant frequency or frequency-modulated (FM) whistles ranging from 4 to 16 kHz (Wartzok and Ketten, 1999). The general consensus is that the tonal vocalizations (whistles) produced by toothed whales play an important role in maintaining contact between dispersed individuals, while broadband clicks are used during echolocation (Wartzok and Ketten, 1999). Burst pulses have also been strongly implicated in communication, with some scientists suggesting that they play an important role in agonistic encounters (McCowan and Reiss, 1995), while others have proposed that they represent ''emotive'' signals in a broader sense, possibly representing graded communication signals (Herzing, 1996). Sperm whales, however, are known to produce only clicks, which are used for both communication and echolocation (Whitehead, 2003). Most of the energy of toothed whale social vocalizations is concentrated near 10 kHz, with source levels for whistles as high as 100 to 180 dB re 1 μPa at 1 m (Richardson *et al.,* 1995). Sperm whales produce clicks, which may be used to echolocate (Mullins *et al.,* 1988), with a frequency range from less than 100 Hz to 30 kHz and source levels up to 230 dB re 1 μPa 1 m or greater (Mohl *et al.,* 2000).

**Brief Background on Sound**

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (e.g., water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter ($W/m^2$). Acoustic intensity is rarely measured directly, but rather from ratios of pressures; the standard reference pressure for underwater sound is 1 microPascal (μPa); for airborne sound, the standard reference pressure is 20 μPa (Richardson *et al.,* 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10-dB increase is a ten-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power; and a 30-dB increase is a 1,000-fold increase in power). A ten-fold increase in acoustic power does not mean that the sound is perceived as being ten times louder, however. Humans perceive a 10-dB increase in sound level as a doubling of loudness, and a 10-dB decrease in sound level as a halving of loudness. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 microPascal (denoted re: 1μPa) as a standard reference pressure unless noted otherwise.

It is important to note that decibel values underwater and decibel values in air are not the same (different reference

pressures and densities/sound speeds between media) and should not be directly compared. Because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in air and water, a sound with the same pressure level in air and in water would be approximately 26 dB lower in air. Thus, a sound that measures 160 dB (re 1 μPa) underwater would have the same approximate effective level as a sound that is 134 dB (re 20 μPa) in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from an earthquake producing sound at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic (typically below 20 Hz, relative to lower frequency bound of human hearing range) and ultrasonic (typically above 20,000 Hz, relative to upper frequency bound of human hearing range) sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband,'' and sounds encompassing a broad range of frequencies are called ''broadband;'' explosives are an example of a broadband sound source and active tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different groups of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using behavioral protocols or auditory evoked potential (AEP) techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions (which are derived from the audiograms described above; see Figure 1 in Southall *et al.,* 2007) developed for each broad group. The functional groups and the associated frequencies for cetaceans are indicated below (though, again, animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans—functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans—functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans—functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;

The estimated hearing range for low-frequency cetaceans has been extended slightly from previous analyses and what was proposed in Southall *et al.* (2007) (from 22 to 30 kHz). This decision is based on data from Watkins *et al.* (1986) for numerous mysticete species, Au *et al.* (2006) for humpback whales, an abstract from Frankel (2005) and paper from Lucifredi and Stein (2007) on gray whales, and an unpublished report (Ketten and Mountain, 2009) and abstract (Tubelli *et al.,* 2012) for minke whales. As more data from more species and/or individuals become available, these estimated hearing ranges may require modification.

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases (propagation loss, also commonly called transmission loss). Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (i.e., typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (e.g., spherical spreading [6 dB reduction with doubling of distance] was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path).

**Metrics Used in This Document**

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used to describe sound levels in the discussions of acoustic effects in this document.

Sound pressure level (SPL)—Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level.

SPL (in dB) = 20 log (pressure/reference pressure)

The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL is an instantaneous pressure measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square pressure, which is the square root of the average of the square of the pressure of the sound signal over a given duration, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of exposure into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

Sound exposure level (SEL)—SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 $\mu Pa^2$-s. Below is a simplified formula relating SPL to SEL.

SEL = SPL + 10log(duration in seconds)

As applied to active sonar, the SEL includes both the SPL of a sonar ping and the total duration of exposure at that SPL. Longer duration pings and/or pings with higher SPLs will have a

higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the cumulative SEL. The cumulative SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed as cumulative SEL.

**Potential Effects of the Specified Activity on Marine Mammals**

The Navy has requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the Study Area. The Navy has analyzed potential impacts to marine mammals from impulsive and non-impulsive sound sources and vessel strike.

Other potential impacts to marine mammals from training and testing activities in the Study Area are analyzed in the Navy's MITT DEIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal harassment. Therefore, the Navy has not requested authorization for take of marine mammals that might occur incidental to other components of their proposed activities. In this document, NMFS analyzes the potential effects on marine mammals from exposure to non-impulsive sound sources (sonar and other active acoustic sources), impulsive sound sources (underwater), and vessel strikes.

For the purpose of MMPA authorizations, NMFS' effects assessments serve four primary purposes: (1) To prescribe the permissible methods of taking (i.e., Level B harassment (behavioral harassment), Level A harassment (injury), or mortality, including an identification of the number and types of take that could occur by harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation); (2) to determine whether the specified activity would have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity would adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity would have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and (4) to prescribe requirements pertaining to monitoring and reporting.

More specifically, for activities involving non-impulsive or impulsive sources, NMFS' analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses (effects to social relationships) that would be classified as a take and whether such take would have a negligible impact on such species or stocks. Vessel strikes, which have the potential to result in incidental take from direct injury and/or mortality, will be discussed in more detail in the Estimated Take of Marine Mammals section. In this section, we will focus qualitatively on the different ways that non-impulsive and impulsive sources may affect marine mammals (some of which NMFS would not classify as harassment). Then, in the Estimated Take of Marine Mammals section, we will relate the potential effects to marine mammals from non-impulsive and impulsive sources to the MMPA definitions of Level A and Level B Harassment, along with the potential effects from vessel strikes, and attempt to quantify those effects.

**Non-Impulsive Sources**

*Direct Physiological Effects*

Based on the literature, there are two basic ways that non-impulsive sources might directly result in physical trauma or damage: noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

*Threshold Shift (noise-induced loss of hearing)*—When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is complete recovery), can occur in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent (i.e., there is not complete recovery), but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). In the case of mid- and high-frequency active sonar (MFAS/HFAS), animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which

noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b, 2013; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Marine mammal hearing plays a critical role in communication between animals of the same species, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging (presbycusis) has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

*Acoustically Mediated Bubble Growth*—One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings or explosion sounds would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient to form nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this. However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. Further investigation is needed to further assess the potential validity of these hypotheses. More information regarding hypotheses that attempt to explain how behavioral responses to non-impulsive sources can lead to strandings is included in the Stranding and Mortality section.

*Acoustic Masking*

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer 2000, Tyack 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) stated that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise

can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980). A study by Nachtigall and Supin (2008) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

As mentioned previously, the functional hearing ranges of mysticetes and odontocetes underwater all encompass the frequencies of the sonar sources used in the Navy's MFAS/HFAS training exercises. Additionally, almost all species' vocal repertoires span across the frequencies of these sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. For hull-mounted sonar, which accounts for the largest takes of marine mammals (because of the source strength and number of hours it's conducted), the pulse length and low duty cycle of the MFAS/HFAS signal makes it less likely that masking would occur as a result.

*Impaired Communication*

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalization can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing marine mammals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery (e.g., Au *et al.,* 1985; Di Iorio and Clark, 2009; Holt *et al.,* 2009; Parks *et al.,* 2009; Parks *et al.,* 2011).

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

*Stress Responses*

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response does not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals

may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker, 2000; Romano *et al.,* 2002; Wright *et al.,* 2008). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In a conceptual model developed by the Population Consequences of Disturbance (PCoD) working group, serum hormones were identified as possible indicators of behavioral effects that are translated into altered rates of reproduction and mortality. The Office of Naval Research hosted a workshop (Effects of Stress on Marine Mammals Exposed to Sound) in 2009 that focused on this very topic (ONR, 2009).

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high-frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (i.e., goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the effects of sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

**Behavioral Disturbance**

Behavioral responses to sound are highly variable and context-specific (Ellison *et al.,* 2012). Many variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in no response or responses including: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson and others in 1995. A more recent review (Nowacek *et al.,* 2007) addresses studies conducted since 1995 and focuses on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. The following sub-sections provide examples of behavioral responses that provide an idea of the variability in behavioral responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Estimates of the types of behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species or extrapolated from closely related species when no information exists.

*Flight Response*—A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. Relatively little information on flight responses of marine mammals to anthropogenic signals exist (e.g., Ford

and Reeves, 2008), although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). Flight responses have been speculated as being a component of marine mammal strandings associated with sonar activities (Evans and England, 2001).

*Response to Predator*—Evidence suggests that at least some marine mammals have the ability to acoustically identify potential predators. For example, harbor seals that reside in the coastal waters off British Columbia are frequently targeted by certain groups of killer whales, but not others. The seals discriminate between the calls of threatening and non-threatening killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required for attending to and responding to all killer whale calls. The occurrence of masking or hearing impairment provides a means by which marine mammals may be prevented from responding to the acoustic cues produced by their predators. Whether or not this is a possibility depends on the duration of the masking/hearing impairment and the likelihood of encountering a predator during the time that predator cues are impeded.

*Diving*—Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive. Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (e.g., increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low-frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.,* 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them.

Due to past incidents of beaked whale strandings associated with sonar operations, feedback paths are provided between avoidance and diving and indirect tissue effects. This feedback accounts for the hypothesis that variations in diving behavior and/or avoidance responses can possibly result in nitrogen tissue supersaturation and nitrogen off-gassing, possibly to the point of deleterious vascular bubble formation (Jepson *et al.,* 2003). Although hypothetical, discussions surrounding this potential process are controversial.

*Foraging*—Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. Noise from seismic surveys was not found to impact the feeding behavior in western grey whales off the coast of Russia (Yazvenko *et al.,* 2007) and sperm whales engaged in foraging dives did not abandon dives when exposed to distant signatures of seismic airguns (Madsen *et al.,* 2006). However, Miller *et al.* (2009) reported buzz rates (a proxy for feeding) 19 percent lower during exposure to distant signatures of seismic airguns. Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.,* 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.,* 2004). Although the received sound pressure levels were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. A determination of whether foraging disruptions incur fitness consequences will require information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal. Goldbogen *et al.,* (2013) monitored behavioral responses of tagged blue whales located in feeding areas when exposed simulated MFA sonar. Responses varied depending on behavioral context, with deep feeding whales being more significantly affected (i.e., generalized avoidance; cessation of feeding; increased swimming speeds; or directed travel away from the source) compared to surface feeding individuals that typically showed no change in behavior. Non-feeding whales also seemed to be affected by exposure. The authors indicate that disruption of feeding and displacement could impact individual fitness and health.

*Breathing*—Variations in respiration naturally fluctuate with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may represent annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.,* 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.,* 2001; Kastelein *et al.,* 2006a) and emissions for underwater data transmission (Kastelein *et al.,* 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.,* 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

*Social relationships*—Social interactions between mammals can be affected by noise via the disruption of communication signals or by the displacement of individuals. Disruption of social relationships therefore depends on the disruption of other behaviors

(e.g., caused avoidance, masking, etc.), and no specific overview is provided here. However, social disruptions must be considered in context of the relationships that are affected. Long-term disruptions of mother/calf pairs or mating displays have the potential to affect the growth and survival or reproductive effort/success of individuals, respectively.

*Vocalizations* (also see Masking Section)—Vocal changes in response to anthropogenic noise can occur across the repertoire of sound production modes used by marine mammals, such as whistling, echolocation click production, calling, and singing. Changes may result in response to a need to compete with an increase in background noise or may reflect an increased vigilance or startle response. For example, in the presence of low-frequency active sonar, humpback whales have been observed to increase the length of their ''songs'' (Miller *et al.,* 2000; Fristrup *et al.,* 2003), possibly due to the overlap in frequencies between the whale song and the low-frequency active sonar. A similar compensatory effect for the presence of low-frequency vessel noise has been suggested for right whales; right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Killer whales off the northwestern coast of the U.S. have been observed to increase the duration of primary calls once a threshold in observing vessel density (e.g., whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.,* 2004). In contrast, both sperm and pilot whales potentially ceased sound production during the Heard Island feasibility test (Bowles *et al.,* 1994), although it cannot be absolutely determined whether the inability to acoustically detect the animals was due to the cessation of sound production or the displacement of animals from the area.

*Avoidance*—Avoidance is the displacement of an individual from an area as a result of the presence of a sound. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals. It is qualitatively different from the flight response, but also differs in the magnitude of the response (i.e., directed movement, rate of travel, etc.). Oftentimes avoidance is temporary, and animals return to the area once the noise has ceased. Longer term displacement is possible, however, which can lead to changes in abundance or distribution patterns of the species in the affected region if they do not become acclimated to the presence of the sound (Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006). Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.,* 2001; Finneran *et al.,* 2003; Kastelein *et al.,* 2006a; Kastelein *et al.,* 2006b). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.,* 1994; Goold, 1996; 1998; Stone *et al.,* 2000; Morton and Symonds, 2002) and to some extent in mysticetes (Gailey *et al.,* 2007), while longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.,* 2007; Miksis-Olds *et al.,* 2007).

Maybaum (1993) conducted sound playback experiments to assess the effects of MFAS on humpback whales in Hawaiian waters. Specifically, she exposed focal pods to sounds of a 3.3-kHz sonar pulse, a sonar frequency sweep from 3.1 to 3.6 kHz, and a control (blank) tape while monitoring behavior, movement, and underwater vocalizations. The two types of sonar signals (which both contained mid- and low-frequency components) differed in their effects on the humpback whales, but both resulted in avoidance behavior. The whales responded to the pulse by increasing their distance from the sound source and responded to the frequency sweep by increasing their swimming speeds and track linearity. In the Caribbean, sperm whales avoided exposure to mid-frequency submarine sonar pulses, in the range of 1000 Hz to 10,000 Hz (IWC 2005).

Kvadsheim *et al.,* (2007) conducted a controlled exposure experiment in which killer whales fitted with D-tags were exposed to mid-frequency active sonar (Source A: a 1.0 second upsweep 209 dB @ 1–2 kHz every 10 seconds for 10 minutes; Source B: with a 1.0 second upsweep 197 dB @ 6–7 kHz every 10 seconds for 10 minutes). When exposed to Source A, a tagged whale and the group it was traveling with did not appear to avoid the source. When exposed to Source B, the tagged whales along with other whales that had been carousel feeding, ceased feeding during the approach of the sonar and moved rapidly away from the source. When exposed to Source B, Kvadsheim and his co-workers reported that a tagged killer whale seemed to try to avoid further exposure to the sound field by the following behaviors: Immediately swimming away (horizontally) from the source of the sound; engaging in a series of erratic and frequently deep dives that seemed to take it below the sound field; or swimming away while engaged in a series of erratic and frequently deep dives. Although the sample sizes in this study are too small to support statistical analysis, the behavioral responses of the orcas were consistent with the results of other studies.

In 2007, the first in a series of behavioral response studies, a collaboration by the Navy, NMFS, and other scientists showed one beaked whale (*Mesoplodon densirostris*) responding to an MFAS playback. Tyack *et al.* (2011) indicates that the playback began when the tagged beaked whale was vocalizing at depth (at the deepest part of a typical feeding dive), following a previous control with no sound exposure. The whale appeared to stop clicking significantly earlier than usual, when exposed to mid-frequency signals in the 130–140 dB (rms) received level range. After a few more minutes of the playback, when the received level reached a maximum of 140–150 dB, the whale ascended on the slow side of normal ascent rates with a longer than normal ascent, at which point the exposure was terminated. The results are from a single experiment and a greater sample size is needed before robust and definitive conclusions can be drawn.

Tyack *et al.* (2011) also indicates that Blainville's beaked whales appear to be sensitive to noise at levels well below expected TTS (~160 dB re1μPa). This sensitivity is manifest by an adaptive movement away from a sound source. This response was observed irrespective of whether the signal transmitted was within the band width of MFAS, which suggests that beaked whales may not respond to the specific sound signatures. Instead, they may be sensitive to any pulsed sound from a point source in this frequency range. The response to such stimuli appears to involve maximizing the distance from the sound source.

Results from a 2007–2008 study conducted near the Bahamas showed a change in diving behavior of an adult Blainville's beaked whale to playback of mid-frequency source and predator sounds (Boyd *et al.,* 2008; Tyack *et al.,* 2011). Reaction to mid-frequency sounds included premature cessation of clicking and termination of a foraging dive, and a slower ascent rate to the surface. Preliminary results from a similar behavioral response study in southern California waters have been presented for the 2010–2011 field

season (Southall *et al.* 2011). Cuvier's beaked whale responses suggested particular sensitivity to sound exposure as consistent with results for Blainville's beaked whale. Similarly, beaked whales exposed to sonar during British training exercises stopped foraging (DSTL 2007), and preliminary results of controlled playback of sonar may indicate feeding/foraging disruption of killer whales and sperm whales (Miller *et al.* 2011). However, studies like DeRuiter *et al.* (2013) highlight the importance of context in predicting behavioral responses of marine mammals to active acoustics. DeRuiter observed that beaked whales exposed to playbacks of U.S. tactical mid-frequency sonar from 89 to 127 dB at close distances responded notably (i.e., altered dive patterns), while individuals did not behaviorally respond when exposed to similar received levels from actual U.S. tactical mid-frequency sonar operated at much further distances.

*Orientation*—A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

There are few empirical studies of avoidance responses of free-living cetaceans to MFAS. Much more information is available on the avoidance responses of free-living cetaceans to other acoustic sources, such as seismic airguns and low-frequency tactical sonar, than MFAS.

**Behavioral Responses**

Southall *et al.* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to human-made sound with the goal of proposing exposure criteria for certain effects. This peer-reviewed compilation of literature is very valuable, though Southall *et al.* (2007) note that not all data are equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration, but were not included in the quantitative analysis for the criteria recommendations. All of the studies considered, however, contain an estimate of the received sound level when the animal exhibited the indicated response.

In the Southall *et al.* (2007) publication, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. MFAS/HFAS sonar is considered a non-pulse sound. Southall *et al.* (2007) summarize the studies associated with low-frequency, mid-frequency, and high-frequency cetacean responses to non-pulse sounds, based strictly on received level, in Appendix C of their article (incorporated by reference and summarized in the three paragraphs below).

The studies that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (~ 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies. There is no data to indicate whether other high frequency cetaceans are as sensitive to anthropogenic sound as harbor porpoises.

In addition to summarizing the available data, the authors of Southall *et al.* (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system; a comprehensive list of the behaviors associated with each score, along with the assigned scores, may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory)
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound), minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory)
- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but is not limited to: Extensive or prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption

of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory)

**Potential Effects of Behavioral Disturbance**

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is little marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. One study related to marine mammals was published by Claridge as a Ph.D. thesis (Claridge, 2013). Claridge investigated the potential effects exposure to mid-frequency active sonar could have on beaked whale demographics. In summary, Claridge suggested that lower reproductive rates observed at the Navy's Atlantic Undersea Test and Evaluation Center (AUTEC), when compared to a control site, were due to stressors associated with frequent and repeated use of Navy sonar. However, the author noted that there may be other unknown differences between the sites. It is also important to note that there were some relevant shortcomings of this study. For example, all of the re-sighted whales during the 5-year study at both sites were female, which Claridge acknowledged can lead to a negative bias in the abundance estimation. There was also a reduced effort and shorter overall study period at the AUTEC site that failed to capture some of the emigration/immigration trends identified at the control site. Furthermore, Claridge assumed that the two sites were identical and therefore should have equal potential abundances; when in reality, there were notable physical differences.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese in undisturbed habitat gained body mass and had about a 46-percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17-percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jet-fights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/minute (50.2 x $10^3$kJ/minute), and spent energy fleeing or acting aggressively toward hikers (White *et al.* 1999). Alternately, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

In response to the National Research Council of the National Academies (2005) review, the Office of Naval Research founded a working group to formalize the Population Consequences of Acoustic Disturbance (PCAD) framework. The PCAD model connects observable data through a series of transfer functions using a case study approach. The long-term goal is to improve the understanding of how effects of sound on marine mammals transfer between behavior and life functions and between life functions and vital rates of individuals. Then, this understanding of how disturbance can affect the vital rates of individuals will facilitate the further assessment of the population level effects of

anthropogenic sound on marine mammals by providing a quantitative approach to evaluate effects and the relationship between takes and possible changes to adult survival and/or annual recruitment. For example, New et al. (2013) uses energetic models to investigate the survival and reproduction of beaked whales. The model suggests that impacts to habitat quality may affect adult female beaked whales' ability to reproduce; and therefore, a reduction in energy intake over a long period of time may have the potential to impact reproduction. However, areas such as the Navy's Southern-California Range Complex continue to support high densities of beaked whales and there are no data to suggest a decline in the population.

**Stranding and Mortality**

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding within the U.S. is that (A) ''a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance'' (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.,* 2003; Fair and Becker, 2000; Foley *et al.,* 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.,* 2004). For reference, between 2001 and 2009, there was an annual average of 1,400 cetacean strandings and 4,300 pinniped strandings along the coasts of the continental U.S. and Alaska (NMFS, 2011).

Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events of Cuvier's beaked whales had been reported and one mass stranding of four Baird's beaked whale. The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been coincident with the use of tactical mid-frequency sonar, one of those seven had been associated with the use of tactical low-frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns.

Most of the stranding events reviewed by the International Whaling Commission involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar.

Between 1960 and 2006, 48 strandings (68 percent) involved beaked whales, three (4 percent) involved dolphins, and 14 (20 percent) involved whale species. Cuvier's beaked whales were involved in the greatest number of these events (48 or 68 percent), followed by sperm whales (seven or 10 percent), and Blainville's and Gervais' beaked whales (four each or 6 percent). Naval activities (not just activities conducted by the U.S. Navy) that might have involved active sonar are reported to have coincided with nine or 10 (13 to 14 percent) of those stranding events. Between the mid-1980s and 2003 (the period reported by the International Whaling Commission), we identified reports of 44 mass cetacean stranding events, of which at least seven were coincident with naval exercises that were using MFAS.

*Strandings Associated With Impulse Sound*

During a Navy training event on March 4, 2011 at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 700-yd (640.1-m) exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately 5 minutes remained on a time-delay fuse connected to a single 8.76 lb (3.97 kg) explosive charge (C–4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011 near Ocean Beach, California (3 days later and approximately 11.8 mi. [19 km] from Silver Strand where the training event occurred), which might also have been related to this event. Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 250 yd (228.6 m) standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a U.S. Navy training or testing event involving impulse energy (underwater detonation) that caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy has reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future. Discussions of procedures associated with these and other training and testing events are presented in the Mitigation section of this document.

*Strandings Associated With MFAS*

Over the past 16 years, there have been five stranding events coincident with military mid-frequency sonar use

in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kauai, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the stranding. A number of other stranding events coincident with the operation of mid-frequency sonar, including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding and only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey. This report suggests that the operation of a commercial high-powered 12 kHz multi-beam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning. Because of the association between tactical mid-frequency active sonar use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to a suite of mitigation intended to more broadly minimize impacts to marine mammals, the Navy and NMFS have a detailed Stranding Response Plan that outlines reporting, communication, and response protocols intended both to minimize the impacts of, and enhance the analysis of, any potential stranding in areas where the Navy operates.

*Greece (1996)*—Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-km strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel *Alliance* was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re: 1μPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.,* 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed, but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found. Examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event were compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in history), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.,* 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.,* 2006).

*Bahamas (2000)*—NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), seven animals died on the beach (five Cuvier's beaked whales, one Blainville's beaked whale, and the spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were

the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whale is the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

*Madeira, Portugal (2000)*—From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.,* 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.,* 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.,* 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.,* 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.,* 2006, Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 35 nm (65 km) and at least 10 nm (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

*Canary Islands, Spain (2002)*—The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.,* 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.,* 2005). Four beaked whales were found stranded dead over the next three days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.,* 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in

decompression sickness (Jepson *et al.,* 2003; Fernández *et al.,* 2005).

*Hanalei Bay (2004)*—On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kauai, Hawaii for over 28 hrs. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004, and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although we do not know when the calf was separated from its mother, the animals' movement into the Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the U.S. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley *et al.,* 2007 suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kauai could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, we consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) the evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006). Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any, relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (e.g., there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.,* 2009; Lignon *et al.,* 2007; Mobley *et al.,* 2007). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.,* (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 100-m contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota (but was similar to the events at Palmyra), which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples.

*Spain (2006)*—The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26

and were found to be still alive. Two other whales were discovered during the day on January 27, but had already died. The first three animals were located near the town of Mojacar and the fourth animal was found dead, a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nm (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

*Association Between Mass Stranding Events and Exposure to MFAS*

Several authors have noted similarities between some of these stranding incidents: they occurred in islands or archipelagoes with deep water nearby, several appeared to have been associated with acoustic waveguides like surface ducting, and the sound fields created by ships transmitting MFAS (Cox *et al.,* 2006, D'Spain *et al.,* 2006). Although Cuvier's beaked whales have been the most common species involved in these stranding events (81 percent of the total number of stranded animals), other beaked whales (including *Mesoplodon europeaus, M. densirostris,* and *Hyperoodon ampullatus*) comprise 14 percent of the total. Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales.

Based on the evidence available, however, we cannot determine whether (a) Cuvier's beaked whale is more prone to injury from high-intensity sound than other species; (b) their behavioral responses to sound makes them more likely to strand; or (c) they are more likely to be exposed to MFAS than other cetaceans (for reasons that remain unknown). Because the association between active sonar exposures and marine mammals mass stranding events is not consistent—some marine mammals strand without being exposed to sonar and some sonar transmissions are not associated with marine mammal stranding events despite their co-occurrence—other risk factors or a grouping of risk factors probably contribute to these stranding events.

*Behaviorally Mediated Responses to MFAS That May Lead to Stranding*

Although the confluence of Navy MFAS with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (e.g., acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand. Similarly, with regards to the aforementioned Madagascar stranding, a review panel suggests that a seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006, Rommel *et al.,* 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.,* 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may

protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.,* 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as 2 kilometers) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of ''bounce'' dives between 100 and 400 m in depth (also see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for Ziphius), perhaps as a consequence of an extended avoidance reaction to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.,* 2003; Fernandez *et al.,* 2005) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (i.e. nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.,* 2007). Baird *et al.* (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but ''bounce dives'' are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that ''bounce dives'' are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

If marine mammals respond to a Navy vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). The probability of flight responses should also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a, b), ringed seals (*Phoca hispida*) (Born *et al.,* 1999), Pacific brant (*Branta bernic nigricans*) and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury (see Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (See Behaviorally Mediated Bubble Growth Section)), Southall *et al.,* (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions. However, studies like DeRuiter *et al.* (2013) highlight the importance of context in predicting behavioral responses of marine mammals to active acoustics. DeRuiter observed that beaked whales exposed to playbacks of U.S. tactical mid-frequency sonar from 89 to 127 dB at close distances responded notably (i.e., altered dive patterns), while individuals did not behaviorally respond when exposed to similar received levels from actual U.S. tactical mid-frequency sonar operated at much further distances.

**Impulsive Sources**

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels result in greater impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the

skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

There have been fewer studies addressing the behavioral effects of explosives on marine mammals compared to MFAS/HFAS. However, though the nature of the sound waves emitted from an explosion are different (in shape and rise time) from MFAS/HFAS, we still anticipate the same sorts of behavioral responses to result from repeated explosive detonations (a smaller range of likely less severe responses (i.e., not rising to the level of MMPA harassment) would be expected to occur as a result of exposure to a single explosive detonation that was not powerful enough or close enough to the animal to cause TTS or injury).

**Vessel Strike**

Commercial and Navy ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007). The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (e.g., bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 13 knots.

Jensen and Silber (2003) detailed 292 records of known or probable ship strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 knots. The majority (79 percent) of these strikes occurred at speeds of 13 knots or greater. The average speed that resulted in serious injury or death was 18.6 knots. Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death by pulling whales toward the vessel. Computer simulation modeling showed that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.,* 1995).

The Jensen and Silber (2003) report notes that the database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Navy vessels are likely to detect any strike that does occur, and they are required to report all ship strikes involving marine mammals. Overall, the percentages of Navy traffic relative to overall large shipping traffic are very small (on the order of 2 percent).

There are no records of any Navy vessel strikes to marine mammals in the Study Area. There have been Navy strikes of large whales in areas outside the Study Area, such as Hawaii and Southern California. However, these areas differ significantly from the Study Area given that both Hawaii and Southern California have a much higher number of Navy vessel activities and appear to have much higher densities of large whales.

**Anticipated Effects on Marine Mammal Habitat**

The Navy's proposed training and testing activities could potentially affect marine mammal habitat through the introduction of sound into the water column, impacts to the prey species of marine mammals, bottom disturbance, or changes in water quality. Each of these components was considered in chapter 3 of the MITT DEIS/OEIS. Based on the information below, the impacts to marine mammals and the food sources that they use are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

*Important Marine Mammal Habitat*

No critical habitat for marine mammals species protected under the ESA has been designated in the MITT Study Area. There are also no known specific breeding or calving areas for marine mammals within the MITT Study Area.

*Expected Effects on Habitat*

Unless the sound source or explosive detonation is stationary and/or continuous over a long duration in one area, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat than the physical alteration of the habitat. Acoustic exposures are not expected to result in long-term physical alteration of the water column or bottom topography, as the occurrences are of

limited duration and are intermittent in time. Surface vessels associated with the activities are present in limited duration and are intermittent as they are continuously and relatively rapidly moving through any given area. Most of the high-explosive military expended materials would detonate at or near the water surface. Only bottom-laid explosives are likely to affect bottom substrate; habitat used for underwater detonations and seafloor device placement would primarily be soft-bottom sediment. Once on the seafloor, military expended material would likely be colonized by benthic organisms because the materials would serve as anchor points in the shifting bottom substrates, similar to a reef. The surface area of bottom substrate affected would make up a very small percentage of the total training and testing area available in the MITT Study Area.

*Effects on Marine Mammal Prey*

*Invertebrates*—Marine invertebrate distribution in the MITT Study Area is influenced by habitat, ocean currents, and water quality factors such as temperature, salinity, and nutrient content (Levinton 2009). The distribution of invertebrates is also influenced by their distance from the equator (latitude); in general, the number of marine invertebrate species increases toward the equator (Macpherson 2002). The higher number of species (diversity) and abundance of marine invertebrates in coastal habitats, compared with the open ocean, is a result of more nutrient availability from terrestrial environments and the variety of habitats and substrates found in coastal waters (Levinton 2009).

The Mariana nearshore environment is characterized by extensive coral bottom and coral reef areas. In general, the coral reefs of the Marianas have a lower coral diversity compared to other reefs in the northwestern Pacific, but a higher density than the reefs of Hawaii. Numerous corals, hydroids, jellyfish, worms, mollusks, arthropods, echinoderms, sponges, and protozoa are found throughout the Study Area. Detailed information on species presence and characteristics is provided in Chapter 3 of the MITT DEIS/OEIS.

Very little is known about sound detection and use of sound by aquatic invertebrates (Budelmann 2010; Montgomery *et al.,* 2006; Popper *et al.,* 2001). Organisms may detect sound by sensing either the particle motion or pressure component of sound, or both. Aquatic invertebrates probably do not detect pressure since many are generally the same density as water and few, if any, have air cavities that would function like the fish swim bladder in responding to pressure (Budelmann 2010; Popper *et al.,* 2001). Many marine invertebrates, however, have ciliated ''hair'' cells that may be sensitive to water movements, such as those caused by currents or water particle motion very close to a sound source (Budelmann 2010; Mackie and Singla 2003). These cilia may allow invertebrates to sense nearby prey or predators or help with local navigation. Marine invertebrates may produce and use sound in territorial behavior, to deter predators, to find a mate, and to pursue courtship (Popper *et al.,* 2001).

Both behavioral and auditory brainstem response studies suggest that crustaceans may sense sounds up to three kilohertz (kHz), but best sensitivity is likely below 200 Hz (Lovell *et al.,* 2005; Lovell *et al.* 2006; Goodall *et al.* 1990). Most cephalopods (e.g., octopus and squid) likely sense low-frequency sound below 1,000 Hz, with best sensitivities at lower frequencies (Budelmann 2010; Mooney *et al.,* 2010; Packard *et al.,* 1990). A few cephalopods may sense higher frequencies up to 1,500 Hz (Hu *et al.,* 2009). Squid did not respond to toothed whale ultrasonic echolocation clicks at sound pressure levels ranging from 199 to 226 dB re 1 μPa peak-to-peak, likely because these clicks were outside of squid hearing range (Wilson *et al.,* 2007). However, squid exhibited alarm responses when exposed to broadband sound from an approaching seismic airgun with received levels exceeding 145 to 150 dB re 1 μPa root mean square (McCauley *et al.,* 2000b).

Little information is available on the potential impacts on marine invertebrates of exposure to sonar, explosions, and other sound-producing activities. It is expected that most marine invertebrates would not sense mid- or high-frequency sounds, distant sounds, or aircraft noise transmitted through the air-water interface. Most marine invertebrates would not be close enough to intense sound sources, such as some sonars, to potentially experience impacts to sensory structures. Any marine invertebrate capable of sensing sound may alter its behavior if exposed to non-impulsive sound, although it is unknown if responses to non-impulsive sounds occur. Continuous noise, such as from vessels, may contribute to masking of relevant environmental sounds, such as reef noise. Because the distance over which most marine invertebrates are expected to detect any sounds is limited and vessels would be in transit, any sound exposures with the potential to cause masking or behavioral responses would be brief and long-term impacts are not expected. Although non-impulsive underwater sounds produced during training and testing activities may briefly impact individuals, intermittent exposures to non-impulsive sounds are not expected to impact survival, growth, recruitment, or reproduction of widespread marine invertebrate populations.

Most detonations would occur greater than 3 nm from shore. As water depth increases away from shore, benthic invertebrates would be less likely to be impacted by detonations at or near the surface. In addition, detonations near the surface would release a portion of their explosive energy into the air, reducing the explosive impacts in the water. Some marine invertebrates may be sensitive to the low-frequency component of impulsive sound, and they may exhibit startle reactions or temporary changes in swim speed in response to an impulsive exposure. Because exposures are brief, limited in number, and spread over a large area, no long-term impacts due to startle reactions or short-term behavioral changes are expected. Although individual marine invertebrates may be injured or killed during an explosion, no long-term impacts on the survival, growth, recruitment, or reproduction of marine invertebrate populations are expected.

*Fish*—Fish are not distributed uniformly throughout the MITT Study Area, but are closely associated with a variety of habitats. Some species range across thousands of square miles while others have small home ranges and restricted distributions (Helfman *et al.,* 2009). There are approximately 1,106 marine fish species in the coastal zone of the Study Area. Detailed information on species presence, distribution, and characteristics are provided in chapter 3 of the MITT DEIS/OEIS.

All fish have two sensory systems to detect sound in the water: the inner ear, which functions very much like the inner ear in other vertebrates, and the lateral line, which consists of a series of receptors along the fish's body (Popper 2008). The inner ear generally detects relatively higher-frequency sounds, while the lateral line detects water motion at low frequencies (below a few hundred Hz) (Hastings and Popper 2005a). Although hearing capability data only exist for fewer than 100 of the 32,000 fish species, current data suggest that most species of fish detect sounds from 50 to 1,000 Hz, with few fish hearing sounds above 4 kHz (Popper 2008). It is believed that most fish have their best hearing sensitivity from 100 to 400 Hz (Popper 2003b). Additionally,

some clupeids (shad in the subfamily Alosinae) possess ultrasonic hearing (i.e., able to detect sounds above 100,000 Hz) (Astrup 1999). Permanent hearing loss, or permanent threshold shift has not been documented in fish. The sensory hair cells of the inner ear in fish can regenerate after they are damaged, unlike in mammals where sensory hair cells loss is permanent (Lombarte *et al.* 1993; Smith *et al.* 2006). As a consequence, any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (e.g., Smith *et al.* 2006).

Potential direct injuries from non-impulsive sound sources, such as sonar, are unlikely because of the relatively lower peak pressures and slower rise times than potentially injurious sources such as explosives. Non-impulsive sources also lack the strong shock waves associated with an explosion. Therefore, direct injury is not likely to occur from exposure to non-impulsive sources such as sonar, vessel noise, or subsonic aircraft noise. Only a few fish species are able to detect high-frequency sonar and could have behavioral reactions or experience auditory masking during these activities. These effects are expected to be transient and long-term consequences for the population are not expected. MFAS is unlikely to impact fish species because most species are unable to detect sounds in this frequency range, and vessels operating MFAS would be transiting an area (not stationary). While a large number of fish species may be able to detect low-frequency sonar and other active acoustic sources, low-frequency active usage is rare and mostly conducted in deeper waters. Overall effects to fish from would be localized and infrequent.

Physical effects from pressure waves generated by underwater sounds (e.g. underwater explosions) could potentially affect fish within proximity of training or testing activities. In particular, the rapid oscillation between high- and low-pressure peaks has the potential to burst the swim bladders and other gas-containing organs of fish (Keevin and Hemen 1997). Sublethal effects, such as changes in behavior of fish, have been observed in several occasions as a result of noise produced by explosives (National Research Council of the National Academies 2003; Wright 1982). If an individual fish were repeatedly exposed to sounds from underwater explosions that caused alterations in natural behavioral patterns or physiological stress, these impacts could lead to long-term consequences for the individual such as reduced survival, growth, or reproductive capacity. However, the time scale of individual explosions is very limited, and training exercises involving explosions are dispersed in space and time. Consequently, repeated exposure of individual fish to sounds from underwater explosions is not likely and most acoustic effects are expected to be short-term and localized. Long-term consequences for populations would not be expected. A limited number of fish may be killed in the immediate proximity of underwater detonations and additional fish may be injured. Short-term effects such as masking, stress, behavioral change, and hearing threshold shifts are also expected during underwater detonations. However, given the relatively small area that would be affected, and the abundance and distribution of the species concerned, no population-level effects are expected. The abundances of various fish and invertebrates near the detonation point of an explosion could be altered for a few hours before animals from surrounding areas repopulate the area; however, these populations would be replenished as waters near the sound source are mixed with adjacent waters.

*Marine Mammal Avoidance*

Marine mammals may be temporarily displaced from areas where Navy training and testing is occurring, but the area should be utilized again after the activities have ceased. Avoidance of an area can help the animal avoid further acoustic effects by avoiding or reducing further exposure. The intermittent or short duration of many activities should prevent animals from being exposed to stressors on a continuous basis. In areas of repeated and frequent acoustic disturbance, some animals may habituate or learn to tolerate the new baseline or fluctuations in noise level. While some animals may not return to an area, or may begin using an area differently due to training and testing activities, most animals are expected to return to their usual locations and behavior.

*Other Expected Effects*

Other sources that may affect marine mammal habitat were considered in the MITT DEIS/OEIS and potentially include the introduction of fuel, debris, ordnance, and chemical residues into the water column. The majority of high-order explosions would occur at or above the surface of the ocean, and would have no impacts on sediments and minimal impacts on water quality. While disturbance or strike from an item falling through the water column is possible, it is unlikely because (1) objects sink slowly, (2) most projectiles are fired at targets (and hit those targets), and (3) animals are generally widely dispersed throughout the water column and over the MITT Study Area. Chemical, physical, or biological changes in sediment or water quality would not be detectable. In the event of an ordnance failure, the energetic materials it contained would remain mostly intact. The explosive materials in failed ordnance items and metal components from training and testing would leach slowly and would quickly disperse in the water column. Chemicals from other explosives would not be introduced into the water column in large amounts and all torpedoes would be recovered following training and testing activities, reducing the potential for chemical concentrations to reach levels that can affect sediment quality, water quality, or benthic habitats.

**Proposed Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(A) 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.'' NMFS' duty under this ''least practicable adverse impact'' standard is to prescribe mitigation reasonably designed to minimize, to the extent practicable, any adverse population-level impacts, as well as habitat impacts. While population-level impacts can be minimized only be reducing impacts on individual marine mammals, not all takes translate to population-level impacts. NMFS' objective under the ''least practicable adverse impact'' standard is to design mitigation targeting those impacts on individual marine mammals that are most likely to lead to adverse population-level effects.

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The training and testing activities described in the Navy's LOA application are considered military readiness activities.

NMFS reviewed the proposed activities and the proposed mitigation measures as described in the Navy's LOA application to determine if they would result in the least practicable

adverse effect on marine mammals, which includes a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of the ''military-readiness activity.'' Included below are the mitigation measures the Navy proposed in their LOA application. NMFS worked with the Navy to develop these proposed measures, and they are informed by years of experience and monitoring.

The Navy's proposed mitigation measures are modifications to the proposed activities that are implemented for the sole purpose of reducing a specific potential environmental impact on a particular resource. These do not include standard operating procedures, which are established for reasons other than environmental benefit. Most of the following proposed mitigation measures are currently, or were previously, implemented as a result of past environmental compliance documents. The Navy's overall approach to assessing potential mitigation measures is based on two principles: (1) Mitigation measures will be effective at reducing potential impacts on the resource, and (2) from a military perspective, the mitigation measures are practicable, executable, and safety and readiness will not be impacted.

*Lookouts*

The use of lookouts is a critical component of Navy procedural measures and implementation of mitigation zones. Navy lookouts are highly qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (OOD) (e.g., trash, a periscope, marine mammals, sea turtles) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel standing watch on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

The Navy would have two types of lookouts for the purposes of conducting visual observations: (1) Those positioned on surface ships, and (2) those positioned in aircraft or on small boats. Lookouts positioned on surface ships would be dedicated solely to diligent observation of the air and surface of the water. They would have multiple observation objectives, including detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

Due to aircraft and boat manning and space restrictions, lookouts positioned in aircraft or on boats would consist of the aircraft crew, pilot, or boat crew. Lookouts positioned in aircraft and boats may be responsible for tasks in addition to observing the air or surface of the water (for example, navigation of a helicopter or rigid hull inflatable boat). However, aircraft and boat lookouts would, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described above for lookouts positioned on surface ships.

The Navy proposes to use at least one lookout during the training and testing activities provided in Table 7. Additional details on lookout procedures and implementation are provided in Chapter 11 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

TABLE 7—LOOKOUT MITIGATION MEASURES FOR TRAINING AND TESTING ACTIVITIES WITHIN THE MITT STUDY AREA

| Number of lookouts | Training and testing activities | Benefit |
|---|---|---|
| 4 | Mine countermeasure and neutralization activities using time-delay firing devices with up to a 20 lb net explosive weight detonation. If applicable, aircrew and divers would report sightings of marine mammals. | Lookouts can visually detect marine mammals so that potentially harmful impacts from explosives use can be avoided. Lookouts dedicated to observations can more quickly And effectively relay sighting information so that corrective action can be taken. Support from aircrew and divers, if they have are involved, would increase the probability of sightings, reducing the potential for impacts. |
| 2 | Vessels greater than 20 m[1] (65 ft) using low-frequency active sonar or hull-mounted mid-frequency active sonar associated with anti-submarine warfare and mine warfare activities at sea; vessels greater than 200 ft (61 m) conducting general mine countermeasure and neutralization activities using up to a 20 lb net explosive weight detonation; mine neutralization activities involving positive control diver-placed charges using up to a 20 lb net explosive weight detonation.. Sinking exercises (one in an aircraft and one on a vessel) | Lookouts can visually detect marine mammals so that potentially harmful impacts from Navy sonar and explosives use can be avoided. Dedicated lookouts can more quickly and effectively relay sighting information so that corrective action can be taken. Support from aircrew and divers, if they are involved, would increase the probability of sightings, reducing the potential for impacts. |

TABLE 7—LOOKOUT MITIGATION MEASURES FOR TRAINING AND TESTING ACTIVITIES WITHIN THE MITT STUDY AREA—Continued

| Number of lookouts | Training and testing activities | Benefit |
|---|---|---|
| 1 ..... | Vessels using low-frequency or hull-mounted mid-frequency active sonar associated with anti-submarine or mine warfare activities at sea; ships less than 65 ft (20 m) in length; the Littoral Combat Ship and similar ships which are minimally manned; ships conducting active sonar activities while moored or at anchor (including pierside); ships or aircraft conducting high-frequency or non-hull mounted mid-frequency active sonar associated with anti-submarine and mine warfare activities at sea; helicopter dipping mid-frequency active sonar; IEER sonobuoys; aircraft conducting explosive sonobuoy exercises using 0.6–2.5 lb net explosive weight; anti-swimmer grenades; vessels less than 200 ft (61 m) conducting general mine countermeasure and neutralization activities using up to a 20 lb net explosive weight detonation; surface gunnery activities; missile using surface target and up to 500 lb net explosive weight; aircraft conducting bombing activities; explosive torpedo testing; vessels underway; activities using towed in-water devices; and activities using non-explosive practice munitions against a surface target. | Lookouts can visually detect marine mammals so that potentially harmful impacts from Navy sonar; explosives; sonobuoys; gunnery rounds; missiles; explosive torpedoes; towed systems; surface vessel propulsion; and non-explosive munitions can be avoided. |

[1] With the exception of the Littoral Combat Ship and similar ships which are minimally manned, moored, or anchored.

Personnel standing watch on the bridge, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare helicopter crews, civilian equivalents, and lookouts would complete the NMFS-approved Marine Species Awareness Training (MSAT) prior to standing watch or serving as a lookout. Additional details on the Navy's MSAT program are provided in Chapter 5 of the MITT DEIS/OEIS.

*Mitigation Zones*

The Navy proposes to use mitigation zones to reduce the potential impacts to marine mammals from training and testing activities. Mitigation zones are measured as the radius from a source and represent a distance that the Navy would monitor. Mitigation zones are applied to acoustic stressors (i.e., non-impulsive and impulsive sound) and physical strike and disturbance (e.g., vessel movement and bombing exercises). In each instance, visual detections of marine mammals would be communicated immediately to a watch station for information dissemination and appropriate action. Acoustic detections would be communicated to lookouts posted in aircraft and on surface vessels.

Most of the current mitigation zones for activities that involve the use of impulsive and non-impulsive sources were originally designed to reduce the potential for onset of TTS. The Navy updated their acoustic propagation modeling to incorporate new hearing threshold metrics (i.e., upper and lower frequency limits), new marine mammal density data, and factors such as an animal's likely presence at various depths. An explanation of the acoustic propagation modeling process can be found in previous authorizations for the Atlantic Fleet Training and Testing Study Area and the Hawaii-Southern California Training and Testing Study Area and the Determination of Acoustic Effects on Marine Mammals and Sea Turtles for the Mariana Islands Training and Testing EIS/OEIS technical report (DoN, 2013).

As a result of updates to the acoustic propagation modeling, some of the ranges to effects are larger than previous model outputs. Due to the ineffectiveness of mitigating such large areas, the Navy is unable to mitigate for onset of TTS during every activity. However, some ranges to effects are smaller than previous models estimated, and the mitigation zones were adjusted accordingly to provide consistency across the measures. The Navy developed each proposed mitigation zone to avoid or reduce the potential for onset of the lowest level of injury, PTS, out to the predicted maximum range. Mitigating to the predicted maximum range to PTS also mitigates to the predicted maximum range to onset mortality (1 percent mortality), onset slight lung injury, and onset slight gastrointestinal tract injury, since the maximum range to effects for these criteria are shorter than for PTS. Furthermore, in most cases, the predicted maximum range to PTS also covers the predicted average range to TTS. Tables 8 and 9 summarize the predicted average range to TTS, average range to PTS, maximum range to PTS, and recommended mitigation zone for each activity category, based on the Navy's acoustic propagation modeling results. It is important for the Navy to have standardized mitigation zones wherever training and testing may be conducted. The information in Tables 8 and 9 was developed in consideration of both Atlantic and Pacific Ocean conditions, marine mammal species, environmental factors, effectiveness, and operational assessments.

The Navy's proposed mitigation zones are based on the longest range for all the marine mammal and sea turtle functional hearing groups. Most mitigation zones were driven by the high-frequency cetaceans or sea turtles functional hearing group. Therefore, the mitigation zones are more conservative for the remaining functional hearing groups (low-frequency and mid-frequency cetaceans), and likely cover a larger portion of the potential range to onset of TTS. Additional information on the estimated range to effects for each acoustic stressor is detailed in Chapter 11 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

TABLE 8—PREDICTED RANGES TO TTS, PTS, AND RECOMMENDED MITIGATION ZONES

| Activity category | Bin (representative source) * | Predicted average (longest) range to TTS | Predicted average (longest) range to PTS | Predicted maximum range to PTS | Recommended mitigation zone |
|---|---|---|---|---|---|
| **Non-Impulsive Sound** | | | | | |
| Low-Frequency and Hull-Mounted Mid-Frequency Active Sonar. | MF1 (SQS–53 ASW hull-mounted sonar). | 4,251 yd. (3,887 m). | 281 yd. (257 m). | <292 yd. (<267 m). | 6 dB power down at 1,000 yd. (914 m); 4 dB power down at 500 yd. (457 m); and shutdown at 200 yd. (183 m). |
| | LF4 (low-frequency sonar) ** | 4,251 yd. (3,887 m). | 281 yd. (257 m). | <292 yd. (<267 m). | 200 yd. (183 m).** |
| High-Frequency and Non-Hull Mounted Mid-Frequency Active Sonar. | MF4 (AQS–22 ASW dipping sonar). | 226 yd. (207 m). | <55 yd. (<50 m). | <55 yd. (<50 m). | 200 yd. (183 m). |
| **Explosive and Impulsive Sound** | | | | | |
| Improved Extended Echo Ranging Sonobuoys. | E4 (Explosive sonobuoy) | 434 yd. (397 m). | 156 yd. (143 m). | 563 yd. (515 m). | 600 yd. (549 m). |
| Explosive Sonobuoys using 0.6–2.5 lb. NEW. | E3 (Explosive sonobuoy) | 290 yd. (265 m). | 113 yd. (103 m). | 309 yd. (283 m). | 350 yd. (320 m). |
| Anti-Swimmer Grenades | E2 (Up to 0.5 lb. NEW) | 190 yd. (174 m). | 83 yd. (76 m) | 182 yd. (167 m). | 200 yd. (183 m). |
| Mine Countermeasure and Neutralization Activities Using Positive Control Firing Devices. | NEW dependent (see Table 9) | | | | |
| Mine Neutralization Diver-Placed Mines Using Time-Delay Firing Devices. | E6 (Up to 20 lb. NEW) | 407 yd. (372 m). | 98 yd. (90 m) | 102 yd. (93 m) | 1,000 yd. (915 m). |
| Gunnery Exercises—Small- and Medium-Caliber (Surface Target). | E2 (40 mm projectile) | 190 yd. (174 m). | 83 yd. (76 m) | 182 yd. (167 m). | 200 yd. (183 m). |
| Gunnery Exercises—Large-Caliber (Surface Target). | E5 (5 in. projectiles at the surface * * * ). | 453 yd. (414 m). | 186 yd. (170 m). | 526 yd. (481 m). | 600 yd. (549 m). |
| Missile Exercises up to 250 lb. NEW (Surface Target). | E9 (Maverick missile) | 949 yd. (868 m). | 398 yd. (364 m). | 699 yd. (639 m). | 900 yd. (823 m). |
| Missile Exercises up to 500 lb. NEW (Surface Target). | E10 (Harpoon missile) | 1,832 yd. (1,675 m). | 731 yd. (668 m). | 1,883 yd. (1,721 m). | 2,000 yd. (1.8 km). |
| Bombing Exercises | E12 (MK–84 2,000 lb. bomb) | 2,513 yd. (2.3 km). | 991 yd. (906 m). | 2,474 yd. (2.3 km). | 2,500 yd. (2.3 km).** |
| Torpedo (Explosive) Testing | E11 (MK–48 torpedo) | 1,632 yd. (1.5 km). | 697 yd. (637 m). | 2,021 yd. (1.8 km). | 2,100 yd. (1.9 km). |
| Sinking Exercises | E12 (Various sources up to the MK–84 2,000 lb. bomb). | 2,513 yd. (2.3 km). | 991 yd. (906 m). | 2,474 yd. (2.3 km). | 2.5 nm. |

ASW: anti-submarine warfare; NEW: net explosive weight; PTS: permanent threshold shift; TTS: temporary threshold shift

* This table does not provide an inclusive list of source bins; bins presented here represent the source bin with the largest range to effects within the given activity category.

** Recommended mitigation zones are larger than the modeled injury zones to account for multiple types of sources or charges being used.

*** The representative source bin E5 has different range to effects depending on the depth of activity occurrence (at the surface or at various depths).

TABLE 9—PREDICTED RANGES TO EFFECTS AND MITIGATION ZONE RADIUS FOR MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES USING POSITIVE CONTROL FIRING DEVICES

| Charge size net explosive weight (bins) | General Mine Countermeasure and neutralization activities using positive control firing devices * | | | | Mine countermeasure and Neutralization activities using diver placed charges under positive control ** | | | |
|---|---|---|---|---|---|---|---|---|
| | Predicted average range to TTS | Predicted average range to PTS | Predicted maximum range to PTS | Recommended Mitigation Zone | Predicted average range to TTS | Predicted average range to PTS | Predicted maximum range too PTS | Recommended mitigation zone |
| 2.6–5 lb. (1.2–2.3 kg) (E4). | 434 yd. (474 m) | 197 yd. (180 m) | 563 yd. (515 m) | 600 yd. (549 m) | 545 yd. (498 m) | 169 yd. (155 m) | 301 yd. (275 m) | 350 yd. (320 m). |
| 6–10 lb. (2.7–4.5 kg) (E5). | 525 yd. (480 m) | 204 yd. (187 m) | 649 Yd. (593 m) | 800 yd. (732 m) | 587 yd. (537 m) | 203 yd. (185 m) | 464 yd. (424 m) | 500 yd. 457 m). |

TABLE 9—PREDICTED RANGES TO EFFECTS AND MITIGATION ZONE RADIUS FOR MINE COUNTERMEASURE AND NEUTRALIZATION ACTIVITIES USING POSITIVE CONTROL FIRING DEVICES—Continued

| Charge size net explosive weight (bins) | General Mine Countermeasure and neutralization activities using positive control firing devices * | | | | Mine countermeasure and Neutralization activities using diver placed charges under positive control ** | | | |
|---|---|---|---|---|---|---|---|---|
| | Predicted average range to TTS | Predicted average range to PTS | Predicted maximum range to PTS | Recommended Mitigation Zone | Predicted average range to TTS | Predicted average range to PTS | Predicted maximum range too PTS | Recommended mitigation zone |
| 11–20 lb. (5–9.1 kg) (E6). | 766 yd. (700 m) | 288 yd. 263 m) | 648 yd. (593 m) | 800 yd. (732 m) | 647 yd. (592 m) | 232 yd. (212 m) | 469 yd. (429 m) | 500 yd. (457 m). |

PTS: permanent threshold shift; TTS: temporary threshold shift.

* These mitigation zones are applicable to all mine countermeasure and neutralization activities conducted in all locations specified in Chapter 2 of the Navy's LOA application.

** These mitigation zones are only applicable to mine countermeasure and neutralization activities involving the use of diver placed charges. These activities are conducted in shallow-water and the mitigation zones are based only on the functional hearing groups with species that occur in these areas (mid-frequency cetaceans and sea turtles).

*Low-Frequency and Hull Mounted Mid-Frequency Active Sonar*

Mitigation measures do not currently exist for low-frequency active sonar sources analyzed in the MITT EIS/OEIS and associated with new platforms or systems, such as the Littoral Combat Ship. The Navy is proposing to (1) add mitigation measures for low-frequency active sonar, (2) continue implementing the current measures for mid-frequency active sonar, and (3) clarify the conditions needed to recommence an activity after a sighting. The proposed measures are below.

Training and testing activities that involve the use of low-frequency and hull-mounted mid-frequency active sonar (including pierside) would use lookouts for visual observation from a ship immediately before and during the exercise. With the exception of certain low-frequency sources that are not able to be powered down during the activity (e.g., low-frequency sources within bin LF4), mitigation would involve powering down the sonar by 6 dB when a marine mammal or sea turtle is sighted within 1,000 yd. (914 m), and by an additional 4 dB when sighted within 500 yd. (457 m) from the source, for a total reduction of 10 dB. If the source can be turned off during the activity, active transmissions would cease if a marine mammal or sea turtle is sighted within 200 yd. (183 m).

Active transmission would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, (4) the ship has transited more than 2,000 yd. (1.8 km) beyond the location of the last sighting, or (5) the ship concludes that dolphins are deliberately closing in on the ship to ride the ship's bow wave (and there are no other marine mammal sightings within the mitigation zone). Active transmission may resume when dolphins are bow riding because they are out of the main transmission axis of the active sonar while in the shallow-wave area of the vessel bow.

If the source is not able to be powered down during the activity (e.g., low-frequency sources within bin LF4), mitigation would involve ceasing active transmission if a marine mammal or sea turtle is sighted within 200 yd. (183 m). Active transmission would recommence if any one of the following conditions is met: (1) The animal is observed existing the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on a determination of its course and speed and the relative motion between the animal and the source, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or (4) the ship has transited more than 400 yd. (366 m) beyond the location of the last sighting and the animal's estimated course direction.

*High-Frequency and Non-Hull Mounted Mid-Frequency Active Sonar*

Mitigation measures do not currently exist for all high-frequency and non-hull mounted mid-frequency active sonar activities (i.e., new sources or sources not previously analyzed). The Navy is proposing to (1) continue implementing the current mitigation measures for activities currently being executed, such as dipping sonar activities, (2) extend the implementation of its current mitigation to all other activities in this category, and (3) clarify the conditions needed to recommence an activity after a sighting. The proposed measures are provided below.

Mitigation would include visual observation from a vessel or aircraft (with the exception of platforms operating at high altitudes) immediately before and during active transmission within a mitigation zone of 200 yd. (183 m) from the active sonar source. For activities involving helicopter-deployed dipping sonar, visual observation would commence 10 minutes before the first deployment of active dipping sonar. If the source can be turned off during the activity, active transmission would cease if a marine mammal is sighted within the mitigation zone. Active transmission would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes for an aircraft-deployed source, (4) the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a vessel-deployed source, (5) the vessel or aircraft has repositioned itself more than 400 yd. (366 m) away from the location of the last sighting and the animal's estimated course direction, or (6) the vessel concludes that dolphins are deliberately closing in to ride the vessel's bow wave (and there are no other marine mammal sightings within the mitigation zone).

*Improved Extended Echo Ranging Sonobuoys*

The Navy is proposing to (1) modify the mitigation measures currently implemented for this activity by reducing the marine mammal and sea turtle mitigation zone from 1,000 yd (914 m) to 600 yd (549 m), and (2) clarify the conditions needed to recommence an activity after a sighting for ease of implementation. The recommended measures are provided below.

Mitigation would include pre-exercise aerial observation and passive acoustic monitoring, which would begin 30 minutes before the first source/receiver pair detonation and continue throughout the duration of the exercise within a mitigation zone of 600 yd (549 m) around an Improved Extended Echo Ranging sonobuoy. The pre-exercise

aerial observation would include the time it takes to deploy the sonobuoy pattern (deployment is conducted by aircraft dropping sonobuoys in the water). Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

Passive acoustic monitoring would be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft and on vessels in order to increase vigilance of their visual surveillance.

*Explosive Sonobuoys Using 0.6 to 2.5 lb Net Explosive Weight*

Mitigation measures do not currently exist for this activity. The Navy is proposing to add the recommended measures provided below.

Mitigation would include pre-exercise aerial monitoring during deployment of the field of sonobuoy pairs (typically up to 20 minutes) and continuing throughout the duration of the exercise within a mitigation zone of 350 yd (320 m) around an explosive sonobuoy. Explosive detonations would cease if a marine mammal or sea turtle is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

Passive acoustic monitoring would also be conducted with Navy assets, such as sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft in order to increase vigilance of their visual surveillance.

*Anti-Swimmer Grenades*

Mitigation measures do not currently exist for this activity. The Navy is proposing to add the recommended measures provided below.

Mitigation would include visual observation from a small boat immediately before and during the exercise within a mitigation zone of 200 yd (183 m) around an anti-swimmer grenade. Explosive detonations would cease if a marine mammal or sea turtle is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or (4) the activity has been repositioned more than 400 yd (366 m) away from the location of the last sighting.

*Mine Countermeasure and Neutralization Activities Using Positive Control Firing Devices*

Mitigation measures do not currently exist for general mine countermeasures and neutralization activities. The Navy is proposing to add the recommended measures provided below.

General mine countermeasure and neutralization activity mitigation would include visual surveillance from small boats or aircraft beginning 30 minutes before, during, and 30 minutes after the completion of the exercise within the mitigation zones around the detonation site. Explosive detonations would cease if a marine mammal is sighted within the mitigation zone. Detonations would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

For activities involving positive control diver-placed charges, the Navy is proposing to (1) modify the currently implemented mitigation measures for activities involving up to a 20 lb net explosive weight detonation, and (2) clarify the conditions needed to recommence an activity after a sighting. For comparison, the currently implemented mitigation zone for up to 10 lb net explosive weight charges is 700 yd (640 m). The recommended measures for activities involving positive control diver-placed activities are provided below.

Visual observation would be conducted by either two small boats, or one small boat in combination with one helicopter. Boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius and human safety zone) and travel in a circular pattern around the detonation location. When using two boats, each boat would be positioned on opposite sides of the detonation location, separated by 180 degrees. If used, helicopters would travel in a circular pattern around the detonation location.

Explosive detonations would cease if a marine mammal is sighted in the water portion of the mitigation zone (i.e., not on shore). Detonations would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes. For training exercises that include the use of multiple detonations, the second (or third, etc.) detonation will occur either immediately after the preceding detonation (i.e., within 10 seconds of the preceding detonation) or after 30 minutes have passed.

*Mine Neutralization Diver-Placed Mines Using Time-Delay Firing Devices*

As background, when mine neutralization activities using diver-placed charges (up to a 20 lb net explosive weight) are conducted with a time-delay firing device, the detonation is fused with a specified time-delay by the personnel conducting the activity and is not authorized until the area is clear at the time the fuse is initiated. During these activities, the detonation cannot be terminated once the fuse is initiated due to human safety concerns.

Mitigation measures do not currently exist for activities using diver-placed charges (up to a 20 lb net explosive weight) with a time-delay firing device. The Navy is recommending the measures provided below.

The Navy is proposing to (1) modify the mitigation zones and observation requirements currently implemented for mine countermeasure and neutralization activities using diver-placed time-delay firing devices (up to a 10 lb net explosive weight), and (2) clarify the conditions needed to recommence an activity after a sighting. For comparison, the current mitigation zones are based on size of charge and length of time-delay, ranging from a 1,000 yd (914 m)

mitigation zone for a 5 lb net explosive weight charge using a 5-minute time-delay to a 1,400 yd (1,280 m) mitigation zone for a 10 lb net explosive weight charge using a 10-minute time-delay. The current requirement in other range complexes is for two boats to be used for observation in mitigation zones that are less than 1,400 yd (1,280 m). The recommended measures for activities involving diver-placed time-delay firing devices are provided below.

The Navy recommends one mitigation zone for all net explosive weights and lengths of time-delay. Mine neutralization activities involving diver-placed charges would not include time-delay longer than 10 min. Mitigation would include visual surveillance from small boats or aircraft commencing 30 minutes before, during, and until 30 minutes after the completion of the exercise within a mitigation zone of 1,000 yd (915 m) around the detonation site. During activities using time-delay firing devices involving up to a 20 lb net explosive weight charge, visual observation will take place using two small boats. The fuse initiation would cease if a marine mammal is sighted within the water portion of the mitigation zone (i.e., not on shore). Fuse initiation would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

Survey boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume radius/human safety zone) and travel in a circular pattern around the detonation location. One lookout from each boat would look inward toward the detonation site and the other lookout would look outward away from the detonation site. When using two small boats, each boat would be positioned on opposite sides of the detonation location, separated by 180 degrees. If available for use, helicopters would travel in a circular pattern around the detonation location.

*Gunnery Exercises (Small- and Medium-Caliber Using Surface Target)*

Mitigation measures do not currently exist for small- and medium-caliber gunnery using a surface target. The Navy is recommending the measures provided below.

Mitigation would include visual observation from a vessel or aircraft immediately before and during the exercise within a mitigation zone of 200 yd (183 m) around the intended impact location. Vessels would observe the mitigation zone from the firing position. When aircraft are firing, the aircrew would maintain visual watch of the mitigation zone during the activity. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: (1) the animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, (4) the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or (5) the intended target location has been repositioned more than 400 yd (366 m) away from the location of the last sighting.

*Gunnery Exercises (Large-Caliber Using a Surface Target)*

The Navy is proposing to (1) continue using the currently implemented mitigation zone for this activity, (2) clarify the conditions needed to recommence an activity after a sighting, and (3) modify the seafloor habitat mitigation area. Mitigation would include visual observation from a ship immediately before and during the exercise within a mitigation zone of 600 yd (549 m) around the intended impact location. Ships would observe the mitigation zone from the firing position. Firing would cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: (1) the animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes.

*Missile Exercises (Including Rockets) Up to 20 lb Net Explosive Weight Using a Surface Target*

The Navy is proposing to (1) modify the mitigation measures currently implemented for this activity by reducing the mitigation zone from 1,800 yd (1.6 km) to 900 yd (823 m), (2) clarify the conditions needed to recommence an activity after a sighting, and (3) modify the platform of observation to eliminate the requirement to observe when ships are firing.

When aircraft are firing, mitigation would include visual observation by the aircrew or supporting aircraft prior to commencement of the activity within a mitigation zone of 900 yd (823 m) around the deployed target. Firing would recommence if any one of the following conditions is met: (1) the animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

*Missile Exercises From 251 to 500 lb Net Explosive Weight Using a Surface Target*

The Navy is proposing to modify the mitigation measures currently implemented for this activity by increasing the mitigation zone from 1,800 yd (1.6 km) to 2,000 yd (1.8 km). When aircraft are firing, mitigation would include visual observation by the aircrew prior to commencement of the activity within a mitigation zone of 2,000 yd (1.8 km) around the intended impact location. Firing would cease if a marine mammal or sea turtle is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: (1) the animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

*Bombing Exercises*

The Navy is proposing to (1) modify the mitigation measures currently implemented for this activity by increasing the mitigation zone from 1,000 yd. (914 m) to 2,500 yd. (2.3 km), and (2) clarify the conditions needed to recommence an activity after a sighting.

Mitigation would include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 2,500 yd (2.3 km) around the intended impact location. Bombing would cease if a marine mammal or sea turtle is sighted within the mitigation zone. Bombing would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

*Torpedo (Explosive) Testing*

Mitigation measures do not currently exist for torpedo (explosive) testing. The

Navy is recommending the measures provided below.

Mitigation would include visual observation by aircraft (with the exception of platforms operating at high altitudes) immediately before, during, and after the exercise within a mitigation zone of 2,100 yd (1.9 km) around the intended impact location. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes or 30 minutes (depending on aircraft type).

In addition to visual observation, passive acoustic monitoring would be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. Passive acoustic observation would be accomplished through the use of remote acoustic sensors or expendable sonobuoys, or via passive acoustic sensors on submarines when they participate in the proposed action. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to the lookout posted in the aircraft in order to increase vigilance of the visual surveillance and to the person in control of the activity for their consideration in determining when the mitigation zone is free of visible marine mammals.

*Sinking Exercises*

The Navy is proposing to (1) modify the mitigation measures currently implemented for this activity by increasing the mitigation zone from 2.0 nm (3.7 km) to 2.5 nm (4.6 km), (2) clarify the conditions needed to recommence an activity after a sighting, and (3) adopt the marine mammal and sea turtle mitigation zone size for aggregations of jellyfish for ease of implementation. The recommended measures are provided below.

Mitigation would include visual observation within a mitigation zone of 2.5 nm (4.6 km) around the target ship hulk. Sinking exercises would include aerial observation beginning 90 minutes before the first firing, visual observations from vessels throughout the duration of the exercise, and both aerial and vessel observation immediately after any planned or unplanned breaks in weapons firing of longer than 2 hours. Prior to conducting the exercise, the Navy would review remotely sensed sea surface temperature and sea surface height maps to aid in deciding where to release the target ship hulk.

The Navy would also monitor using passive acoustics during the exercise. Passive acoustic monitoring would be conducted with Navy assets, such as passive ships sonar systems or sonobuoys, already participating in the activity. These assets would only detect vocalizing marine mammals within the frequency bands monitored by Navy personnel. Passive acoustic detections would not provide range or bearing to detected animals, and therefore cannot provide locations of these animals. Passive acoustic detections would be reported to lookouts posted in aircraft and on vessels in order to increase vigilance of their visual surveillance. Lookouts will also increase observation vigilance before the use of torpedoes or unguided ordnance with a net explosive weight of 500 lb or greater, or if the Beaufort sea state is a 4 or above.

The exercise would cease if a marine mammal, sea turtle, or aggregation of jellyfish (i.e., visible gathering of multiple jellyfish) is sighted within the mitigation zone. The exercise would recommence if any one of the following conditions is met: (1) The animal (or jellyfish aggregation) is observed exiting the mitigation zone, (2) the animal (or jellyfish aggregation) is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes. Upon sinking the vessel, the Navy would conduct post-exercise visual surveillance of the mitigation zone for 2 hours (or until sunset, whichever comes first).

*Gunnery Exercises (Large Caliber)*

The Navy is proposing to implement the following mitigation measure, which only applies to the firing side of the ship as provided below.

For all explosive and non-explosive large-caliber gunnery exercises conducted from a ship, mitigation would include visual observation immediately before and during the exercise within a mitigation zone of 70 yd (64 m) within 30 degrees on either side of the gun target line on the firing side. Firing would cease if a marine mammal is sighted within the mitigation zone. Firing would recommence if any one of the following conditions is met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 30 minutes, or (4) the vessel has repositioned itself more than 140 yd (128 m) away from the location of the last sighting and the animal's estimated course direction.

*Vessels and In-Water Devices*

*Vessel Movement*—Ships would avoid approaching marine mammals head on and would maneuver to maintain a mitigation zone of 457 m around observed whales, and 183 m around all other marine mammals (except bow riding dolphins), providing it is safe to do so.

*Towed In-Water Devices*—The Navy would ensure towed in-water devices avoid coming within a mitigation zone of 229 m around any observed marine mammal, providing it is safe to do so.

*Non-Explosive Practice Munitions*

*Gunnery Exercises (small, medium, and large caliber using a surface target)*—Mitigation would include visual observation immediately before and during the exercise within a mitigation zone of 183 m around the intended impact location. Firing would cease if a marine mammal is visually detected within the mitigation zone. Firing would recommence if any one of the following conditions are met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes for a firing aircraft, (4) the mitigation zone has been clear from any additional sightings for a period of 30 minutes for a firing ship, or (5) the intended target location has been repositioned more than 366 m away from the location of the last sighting and the animal's estimated course direction.

*Bombing Exercises*—Mitigation would include visual observation from the aircraft immediately before the exercise and during target approach within a mitigation zone of 914 m around the intended impact location. Bombing would cease if a marine mammal is visually detected within the mitigation zone. Bombing would recommence if any one of the following conditions are met: (1) The animal is observed exiting the mitigation zone, (2) the animal is thought to have exited the mitigation zone based on its course and speed, or (3) the mitigation zone has been clear from any additional sightings for a period of 10 minutes.

*Cetacean and Sound Mapping*

NMFS Office of Protected Resources standardly considers available information about marine mammal habitat used to inform discussions with applicants regarding potential spatio-temporal limitations of their activities that might help effect the least practicable adverse impact. Through the Cetacean and Sound Mapping effort (*http://cetsound.noaa.gov/index.html*), NOAA's Cetacean Density and Distribution Mapping Working Group (CetMap) is currently involved in a process to compile available literature and solicit expert review to identify areas and times where species are known to concentrate for specific behaviors (e.g., feeding, breeding/calving, or migration) or be range-limited (e.g., small resident populations). These areas, called Biologically Important Areas (BIAs), are useful tools for planning and impact assessments and are being provided to the public via the CetSound Web site, along with a summary of the supporting information. However, areas outside of the U.S. EEZ were not evaluated as part of the BIA exercises.

*Stranding Response Plan*

NMFS and the Navy developed a Stranding Response Plan for MIRC in 2010 as part of the incidental take authorization process. The Stranding Response Plan is specifically intended to outline the applicable requirements in the event that a marine mammal stranding is reported in the MIRC during a major training exercise. NMFS considers all plausible causes within the course of a stranding investigation and this plan in no way presumes that any strandings in a Navy range complex are related to, or caused by, Navy training and testing activities, absent a determination made during investigation. The plan is designed to address mitigation, monitoring, and compliance. The Navy is currently working with NMFS to refine this plan for the new MITT Study Area. The current Stranding Response Plan for the MIRC is available for review here: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

*Mitigation Conclusions*

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the first phase of authorizations—and considered a broad range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: The manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the suite of measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to accomplishing one or more of the general goals listed below:

a. Avoid or minimize injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

b. Reduce the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

c. Reduce the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

d. Reduce the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

e. Avoid or minimize adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

f. For monitoring directly related to mitigation—increase the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS, NMFS has determined preliminarily that the Navy's proposed mitigation measures (especially when the adaptive management component is taken into consideration (see Adaptive Management, below)) are adequate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding this action and the proposed mitigation measures. While NMFS has determined preliminarily that the Navy's proposed mitigation measures would affect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

**Proposed Monitoring and Reporting**

Section 101(a)(5)(A) of the MMPA states that in order to issue an ITA for an activity, 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 LOAs 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.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

- Increase the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below.
- Increase our understanding of how many marine mammals are likely to be

exposed to levels of MFAS/HFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

- Increase our understanding of how marine mammals respond to MFAS/HFAS (at specific received levels), explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
- Behavioral observations in the presence of MFAS/HFAS compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information)
- Physiological measurements in the presence of MFAS/HFAS compared to observations in the absence of tactical sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information)
- Pre-planned and thorough investigation of stranding events that occur coincident to naval activities
- Distribution and/or abundance comparisons in times or areas with concentrated MFAS/HFAS versus times or areas without MFAS/HFAS
- Increased our knowledge of the affected species.
- Increase our understanding of the effectiveness of certain mitigation and monitoring measures.

*Integrated Comprehensive Monitoring Program (ICMP)*

The Navy's ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. Although the ICMP does not specify actual monitoring field work or projects, it does establish top-level goals that have been developed in coordination with NMFS. As the ICMP is implemented, detailed and specific studies will be developed which support the Navy's top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to accomplish one or more top-level goals. Monitoring would address the ICMP top-level goals through a collection of specific regional and ocean basin studies based on scientific objectives. Quantitative metrics of monitoring effort (e.g., 20 days of aerial surveys) would not be a specific requirement. The adaptive management process and reporting requirements would serve as the basis for evaluating performance and compliance, primarily considering the quality of the work and results produced, as well as peer review and publications, and public dissemination of information, reports, and data. Details of the ICMP are available online (*http://www.navymarinespecies monitoring.us/*).

*Strategic Planning Process for Marine Species Monitoring*

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around top-level goals, a conceptual framework incorporating a progression of knowledge, and in consultation with a Scientific Advisory Group and other regional experts. The Strategic Planning Process for Marine Species Monitoring would be used to set intermediate scientific objectives, identify potential species of interest at a regional scale, and evaluate and select specific monitoring projects to fund or continue supporting for a given fiscal year. This process would also address relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*http://www.navymarinespecies monitoring.us/*).

*Past and Current Monitoring in the MITT Study Area*

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the MIRC and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the proposed training and testing activities within the Study Area. The Navy's annual exercise and monitoring reports may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* and *http://www.navymarinespeciesmonitoring.us.* NMFS has reviewed these reports and summarized the results, as related to marine mammal monitoring, below.

1. The Navy has shown significant initiative in developing its marine species monitoring program and made considerable progress toward reaching goals and objectives of the ICMP. In 2013, the Navy developed a monitoring plan for the MIRC that focused on the goals of the ICMP by using the Strategic Planning Process to move away from a monitoring plan based on previously-used metrics of effort to a more effective one based upon evaluating progress made on monitoring questions.
2. Monitoring in the Mariana Islands presents special challenges. Past experience has proven that windward sides of islands and offshore areas are difficult to access in small vessels (HDR, 2011; Hill *et al.,* 2011; Ligon *et al.,* 2011). Winter conditions consistently impair field efforts. For these reasons, sighting opportunities of baleen whales are infrequent. Alternative means of collecting data that complement existing visual methodologies may help facilitate achieving data collection goals.
3. Observation data from watchstanders aboard Navy vessels is generally useful to indicate the presence or absence of marine mammals within the mitigation zones (and sometimes beyond) and to document the implementation of mitigation measures, but does not provide useful species-specific information or behavioral data.
4. Data gathered by experienced marine mammal observers in a Navy-wide monitoring program across multiple ranges can provide very valuable information at a level of detail not possible with watchstanders.
5. Though it is by no means conclusive, it is worth noting that no instances of obvious behavioral disturbance have been observed by Navy watchstanders or experienced marine mammal observers conducting visual monitoring.
6. Visual surveys generally provide suitable data for addressing questions of distribution and abundance of marine mammals, but are much less effective at providing information on movement patterns, habitat use, and behavior, with a few notable exceptions where sightings are most frequent. A pilot study on shore-based visual observations showed potential as an alternative visual methodology for some windward shores that are less accessible to small boats due to prevailing weather conditions.

7. Satellite tagging has proven to be a valuable tool for addressing questions of marine mammal movement patterns and habitat use of various species in Navy monitoring efforts across the Pacific. Recently, this technique has proven to be particularly valuable in the MIRC (Hill *et al.,* 2013), and provides data on these questions for infrequently-encountered species even when a wide body of visual survey data does not exist.

8. Passive acoustics has significant potential for applications addressing animal movements and behavioral response to Navy training activities, but require a longer time horizon and heavy investment in analysis to produce relevant results. The estimated time required is particularly long in MIRC compared to other Navy ranges because relatively little is known about the features of marine mammal vocalizations specific to populations found in the waters of the MIRC. This knowledge can only be gained by gradual long-term accumulation of a body of acoustic recordings made of animals that have been visually-verified to species.

Navy-funded monitoring accomplishments in the MIRC from 2010 to 2013 are provided in the Navy's monitoring reports, as required by the 2010 rulemaking and available here: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Navy marine species monitoring conducted in the MIRC since 2010 utilized a combination of visual line-transect surveys, non-random/non-systematic visual surveys, satellite tagging, biopsy, shore-based visual surveys, analysis of archived acoustic data, and deployment of autonomous passive acoustic monitoring devices. Following is a summary of the work conducted:

- Collected and analyzed thousands of cetacean photos taken during all Marianas surveys;
- Analyzed acoustic recordings from both towed arrays and moored passive acoustic monitoring devices, including archived datasets and Navy-funded deployments;
- Conducted visual surveys or shore based surveys around Guam, Tinian, Rota, Aguijan and Saipan, and funded observers on offshore line transect surveys that crossed the MIRC;
- Purchased, deployed, and analyzed data from satellite tags;
- Collected and analyzed biopsy samples for population structure analysis; and
- Funded NMFS to catalog all photos collected since 2007, including performing mark-recapture population analysis.

Navy and Navy/NMFS collaborative surveys have been conducted in the Study Area since 2007. Most recently, Hill *et al.* (2013) reported 17 cetacean sightings during 11 surveys off Guam and 20 cetacean sightings over the course of 20 surveys of the CNMI. Seventy-two percent of sightings in waters of the CNMI occurred in the waters surrounding the islands of Saipan, Tinian, and Aguijan. However, the encounter rate around the island of Rota was greater than elsewhere in the survey area, and species sighted at Rota were in approximately the same location when they were sighted during surveys conducted in 2011, suggesting that the area is consistently used by those species. The Navy's recent photo-ID analysis shows that individual short-finned pilot whales, spinner dolphins, and bottlenose dolphins are moving between islands. Data collection and analysis within this area is ongoing. There have been no reported observations of adverse reactions by marine mammals and no dead or injured animals reported associated with Navy training activities in the MIRC. The U.S. Pacific Fleet funding share as part of the overall Navy-wide funding in marine mammal research and monitoring in the MIRC was over $1.4 million from 2010 to 2012.

*Proposed Monitoring for the MITT Study Area*

Based on discussions between the Navy and NMFS, future monitoring should address the ICMP top-level goals through a collection of specific regional and ocean basin studies based on scientific objectives. Quantitative metrics of monitoring effort (e.g., 20 days of aerial survey) would not be a specific requirement. Monitoring would follow the strategic planning process and conclusions from adaptive management review by diverging from non-quantitative metrics of monitoring effort towards the primary mandate of setting progress goals addressing specific scientific monitoring questions. The adaptive management process and reporting requirements would serve as the basis for evaluating performance and compliance, primarily considering the quality of the work and results produced, as well as peer review and publications, and public dissemination of information, reports, and data. The strategic planning process would be used to set intermediate scientific objectives, identify potential species of interest at a regional scale, and evaluate and select specific monitoring projects to fund or continue supporting for a given fiscal year. The strategic planning process would also address relative investments to different range complexes based on goals across all range complexes, and monitoring would leverage multiple techniques for data acquisition and analysis whenever possible.

The SAG confirmed the Navy/NMFS decision made in 2009 that because so little is known about species occurrence in this area, the priority for the MIRC should be establishing basic marine mammal occurrence. Passive acoustic monitoring, small boat surveys, biopsy sampling, satellite tagging, and photo-identification are all appropriate methods for evaluating marine mammal occurrence and abundance in the MITT Study Area. Fixed acoustic monitoring and development of local expertise ranked highest among the SAG's recommended monitoring methods for the area. There is an especially high level of return for monitoring around the Mariana Islands because so little is currently known about this region. Specific monitoring efforts would result from future Navy/NMFS monitoring program management.

*Ongoing Navy Research*

The Navy is one of the world's leading organizations in assessing the effects of human activities on the marine environment, and provides a significant amount of funding and support to marine research, outside of the monitoring required by their incidental take authorizations. They also develop approaches to ensure that these resources are minimally impacted by current and future Navy operations. Navy scientists work cooperatively with other government researchers and scientists, universities, industry, and non-governmental conservation organizations in collecting, evaluating, and modeling information on marine resources, including working towards a better understanding of marine mammals and sound. From 2004 to 2012, the Navy has provided over $230 million for marine species research. The Navy sponsors 70 percent of all U.S. research concerning the effects of human-generated sound on marine mammals and 50 percent of such research conducted worldwide. Major topics of Navy-supported marine species research directly applicable to proposed activities within the MITT Study Area include the following:

- Better understanding of marine species distribution and important habitat areas;
- Developing methods to detect and monitor marine species before, during, and after training and testing activities;

• Better understanding the impacts of sound on marine mammals, sea turtles, fish, and birds; and

• Developing tools to model and estimate potential impacts of sound.

It is imperative that the Navy's research and development (R&D) efforts related to marine mammals are conducted in an open, transparent manner with validated study needs and requirements. The goal of the Navy's R&D program is to enable collection and publication of scientifically valid research as well as development of techniques and tools for Navy, academic, and commercial use. The two Navy organizations that account for most funding and oversight of the Navy marine mammal research program are the Office of Naval Research (ONR) Marine Mammals and Biology Program, and the Office of the Chief of Naval Operations (CNO) Energy and Environmental Readiness Division (N45) Living Marine Resources (LMR) Program. The primary focus of these programs has been on understanding the effects of sound on marine mammals, including physiological, behavioral and ecological effects.

The ONR Marine Mammals and Biology Program supports basic and applied research and technology development related to understanding the effects of sound on marine mammals, including physiological, behavioral, ecological, and population-level effects. Current program thrusts include:

• Monitoring and detection;

• Integrated ecosystem research including sensor and tag development;

• Effects of sound on marine life including hearing, behavioral response studies, diving and stress physiology, and Population Consequences of Acoustic Disturbance (PCAD); and

• Models and databases for environmental compliance.

To manage some of the Navy's marine mammal research programmatic elements, OPNAV N45 developed in 2011 a new Living Marine Resources (LMR) Research and Development Program. The mission of the LMR program is to develop, demonstrate, and assess information and technology solutions to protect living marine resources by minimizing the environmental risks of Navy at-sea training and testing activities while preserving core Navy readiness capabilities. This mission is accomplished by:

• Improving knowledge of the status and trends of marine species of concern and the ecosystems of which they are a part;

• Developing the scientific basis for the criteria and thresholds to measure the effects of Navy generated sound;

• Improving understanding of underwater sound and sound field characterization unique to assessing the biological consequences resulting from underwater sound (as opposed to tactical applications of underwater sound or propagation loss modeling for military communications or tactical applications); and

• Developing technologies and methods to monitor and, where possible, mitigate biologically significant consequences to living marine resources resulting from naval activities, emphasizing those consequences that are most likely to be biologically significant.

The program is focused on three primary objectives that influence program management priorities and directly affect the program's success in accomplishing its mission:

1. Collect, Validate, and Rank R&D Needs: Expand awareness of R&D program opportunities within the Navy marine resource community to encourage and facilitate the submittal of well-defined and appropriate needs statements.

2. Address High Priority Needs: Ensure that program investments and the resulting projects maintain a direct and consistent link to the defined user needs.

3. Transition Solutions and Validate Benefits: Maximize the number of program-derived solutions that are successfully transitioned to the Fleet and system commands.

The LMR program primarily invests in the following areas:

• Developing Data to Support Risk Threshold Criteria;

• Improved Data Collection on Protected Species, Critical Habitat within Navy Ranges;

• New Monitoring and Mitigation Technology Demonstrations;

• Database and Model Development; and

• Education and Outreach, Emergent Opportunities.

LMR currently supports the Marine Mammal Monitoring on Ranges program at the Pacific Missile Range Facility on Kauai and, along with ONR, the multi-year Southern California Behavioral Response Study (*http://www.socal-brs.org*). This type of research helps in understanding the marine environment and the effects that may arise from underwater noise in oceans. Further, NMFS is working on a long-term stranding study that will be supported by the Navy by way of a funding and information sharing component (see below).

*Navy Research and Development*

*Navy Funded*—At this time, there are no LMR or ONR funded research and development projects in the MITT Study Area. However, when projects are initiated, the Navy's monitoring program will be coordinated with the research and development monitoring program to leverage research objectives, assets, and studies where possible under the ICMP.

*Other National Department of Defense Funded Initiatives*—The Strategic Environmental Research and Development Program (SERDP) and Environmental Security Technology Certification Program (ESTCP) are the Department of Defense's environmental research programs, harnessing the latest science and technology to improve environmental performance, reduce costs, and enhance and sustain mission capabilities. The programs respond to environmental technology requirements common to all military services, complementing the services' research programs. SERDP and ESTCP promote partnerships and collaboration among academia, industry, the military services, and other federal agencies. They are independent programs managed from a joint office to coordinate the full spectrum of efforts, from basic and applied research to field demonstration and validation.

**Adaptive Management**

The final regulations governing the take of marine mammals incidental to Navy training and testing activities in the MITT Study Area would contain an adaptive management component carried over from previous authorizations. Although better than 5 years ago, our understanding of the effects of Navy training and testing activities (e.g., mid- and high-frequency active sonar, underwater detonations) on marine mammals is still relatively limited, and yet the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes are appropriate. NMFS and the Navy would meet to discuss the monitoring reports, Navy R&D developments, and current

science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercises reports, as required by MMPA authorizations; (2) compiled results of Navy funded R&D studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

*Proposed Reporting Measures*

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Some of the reporting requirements are still in development and the final rulemaking may contain additional details not contained here. Additionally, proposed reporting requirements may be modified, removed, or added based on information or comments received during the public comment period. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects would be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us*. Currently, there are several different reporting requirements pursuant to these proposed regulations:

*General Notification of Injured or Dead Marine Mammals*—Navy personnel would ensure that NMFS (the appropriate Regional Stranding Coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing mid-frequency active sonar, high-frequency active sonar, or underwater explosive detonations. The Navy would provide NMFS with species identification or a description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photographs or video (if available). The MITT Stranding Response Plan contains further reporting requirements for specific circumstances (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

*Annual Monitoring and Exercise Reports*—As noted above, reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects would be posted to the Navy's Marine Species Monitoring web portal and NMFS' Web site as they become available. Progress and results from all monitoring activity conducted within the MITT Study Area, as well as required Major Training Event exercise activity, would be summarized in an annual report. A draft report would be submitted either 90 days after the calendar year or 90 days after the conclusion of the monitoring year, date to be determined by the adaptive management review process. In the past, each annual report has summarized data for a single year. At the Navy's suggestion, future annual reports would take a cumulative approach in that each report will compare data from that year to all previous years. For example, the third annual report will include data from the third year and compare it to data from the first and second years. This will provide an ongoing cumulative look at the Navy's annual monitoring and exercise and testing reports and eliminate the need for a separate comprehensive monitoring and exercise summary report at the end of the 5-year period.

**Estimated Take by Incidental Harassment**

In the potential effects section, NMFS' analysis identified the lethal responses, physical trauma, sensory impairment (PTS, TTS, and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from exposure to mid- and high-frequency active sonar or underwater explosive detonations. In this section, we will relate the potential effects to marine mammals from mid- and high-frequency active sonar and underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B harassment and attempt to quantify the effects that might occur from the proposed training and testing activities in the Study Area.

As mentioned previously, behavioral responses are context-dependent, complex, and influenced to varying degrees by a number of factors other than just received level. For example, an animal may respond differently to a sound emanating from a ship that is moving towards the animal than it would to an identical received level coming from a vessel that is moving away, or to a ship traveling at a different speed or at a different distance from the animal. At greater distances, though, the nature of vessel movements could also potentially not have any effect on the animal's response to the sound. In any case, a full description of the suite of factors that elicited a behavioral response would require a mention of the vicinity, speed and movement of the vessel, or other factors. So, while sound sources and the received levels are the primary focus of the analysis and those that are laid out quantitatively in the regulatory text, it is with the understanding that other factors related to the training are sometimes contributing to the behavioral responses of marine mammals, although they cannot be quantified.

*Definition of Harassment*

As mentioned previously, with respect to military readiness activities, section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

*Level B Harassment*

Of the potential effects that were described earlier in this document, the following are the types of effects that fall into the Level B harassment category:

*Behavioral Harassment*—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to non-impulsive or impulsive sound, is considered Level B harassment. Some of the lower level physiological stress responses discussed earlier would also likely co-occur with the predicted harassments, although these responses

are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

Earlier in this document, we described the Southall *et al.,* (2007) severity scaling system and listed some examples of the three broad categories of behaviors: 0–3 (Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 category. Behavioral harassment does not generally include behaviors ranked 0–3 in Southall *et al.,* (2007).

*Acoustic Masking and Communication Impairment*—Acoustic masking is considered Level B harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

*Temporary Threshold Shift (TTS)*—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear, displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to sonar and other active acoustic sources and explosives and other impulsive sources) as Level B harassment, not Level A harassment (injury).

*Level A Harassment*

Of the potential effects that were described earlier, following are the types of effects that fall into the Level A Harassment category:

*Permanent Threshold Shift (PTS)*—PTS (resulting either from exposure to MFAS/HFAS or explosive detonations) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids.

*Tissue Damage due to Acoustically Mediated Bubble Growth*—A few theories suggest ways in which gas bubbles become enlarged through exposure to intense sounds (MFAS/HFAS) to the point where tissue damage results. In rectified diffusion, exposure to a sound field would cause bubbles to increase in size. A short duration of sonar pings (such as that which an animal exposed to MFAS would be most likely to encounter) would not likely be long enough to drive bubble growth to any substantial size. Alternately, bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. The degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert because of how close an animal would need to be to the sound source to be exposed to high enough levels, especially considering the likely avoidance of the sound source and the required mitigation. Still, possible tissue damage from either of these processes would be considered an injury.

*Tissue Damage due to Behaviorally Mediated Bubble Growth*—Several authors suggest mechanisms by which marine mammals could behaviorally respond to exposure to MFAS/HFAS by altering their dive patterns (unusually rapid ascent, unusually long series of surface dives, etc.) in a manner that might result in unusual bubble formation or growth ultimately resulting in tissue damage. In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. There is considerable disagreement among scientists as to the likelihood of this phenomenon (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Although it has been argued that traumas from recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003; Fernandez *et al.,* 2005), nitrogen bubble formation as the cause of the traumas has not been verified. If tissue damage does occur by this phenomenon, it would be considered an injury.

*Physical Disruption of Tissues Resulting from Explosive Shock Wave*—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill 1978; Yelverton *et al.,* 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

*Vessel or Ordnance Strike*—Vessel strike or ordnance strike associated with the specified activities would be considered Level A harassment, serious injury, or mortality.

*Take Thresholds*

For the purposes of an MMPA authorization, three types of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to non-impulse and impulse sounds cannot be easily detected or measured, and because NMFS must authorize take prior to the impacts to marine mammals, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS developed acoustic thresholds that estimate at what received level (when exposed to non-impulse or impulse sounds) Level B harassment and Level A harassment of marine mammals would occur. The acoustic thresholds for non-impulse and impulse sounds are discussed below.

*Level B Harassment Threshold (TTS)*—Behavioral disturbance, acoustic masking, and TTS are all considered Level B harassment. Marine mammals would usually be behaviorally disturbed

at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance are likely to occur is considered the onset of Level B harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (see Risk Function section, below). Alternately, TTS is a physiological effect that has been studied and quantified in laboratory conditions. Because data exist to support an estimate of the received levels at which marine mammals will incur TTS, NMFS uses acoustic thresholds to estimate the number of marine mammals that might sustain TTS. TTS is a subset of Level B Harassment (along with sub-TTS behavioral harassment) and we are not specifically required to estimate those numbers; however, the more specifically we can estimate the affected marine mammal responses, the better the analysis.

*Level A Harassment Threshold (PTS)*—For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been determined through study of terrestrial mammals.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) does not exist. However, based on the number of years (more than 60) and number of hours of MFAS per year that the U.S. (and other countries) has operated compared to the reported (and verified) cases of associated marine mammal strandings, NMFS believes that the probability of these types of injuries is very low. Tables 10 and 11 provide a summary of non-impulsive thresholds to TTS and PTS for marine mammals. A detailed explanation of how these thresholds were derived is provided in the MITT DEIS/OEIS Criteria and Thresholds Technical Report (*http://mitt-eis.com/DocumentsandReferences/EISDocuments/SupportingTechnicalDocuments.aspx*) and summarized in Chapter 6 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

TABLE 10—ONSET TTS AND PTS THRESHOLDS FOR NON-IMPULSE SOUND

| Group | Species | Onset TTS | Onset PTS |
|---|---|---|---|
| Low-Frequency Cetaceans | All mysticetes | 178 dB re 1μPa2-sec($LF_{II}$) | 198 dB re 1μPa2-sec($LF_{II}$). |
| Mid-Frequency Cetaceans | Most delphinids, beaked whales, medium and large toothed whales. | 178 dB re 1μPa2-sec($MF_{II}$) | 198 dB re 1μPa2-sec($MF_{II}$). |
| High-Frequency Cetaceans | Porpoises, Kogia spp. | 152 dB re 1μPa2-sec($HF_{II}$) | 172 dB re 1μPa2-secSEL ($HF_{II}$). |

$LF_{II}$, $MF_{II}$, $HF_{II}$: New compound Type II weighting functions.

TABLE 11—IMPULSIVE SOUND EXPLOSIVE THRESHOLDS FOR PREDICTING INJURY AND MORTALITY

| Group | Species | Slight injury | | | Mortality |
|---|---|---|---|---|---|
| | | PTS | GI Tract | Lung | |
| Low-Frequency Cetaceans. | All mysticetes | 187 dB SEL ($LF_{II}$) or 230 dB Peak SPL. | 237 dB SPL or 104 psi | Equation 1 | Equation 2. |
| Mid-Frequency Cetaceans | Most delphinids, medium and large toothed whales. | 187 dB SEL ($MF_{II}$) or 230 dB Peak SPL. | | | |
| High-Frequency Cetaceans. | Porpoises and *Kogia* spp. | 161 dB SEL ($HF_{II}$) or 201dB Peak SPL. | | | |

Equation 1: $= 39.1M^{1/3}\ (1+[D_{Rm}/10.081])^{1/2}$ Pa–sec

Equation 2: $= 91.4M^{1/3}\ (1+[D_{Rm}/10.081])^{1/2}$ Pa–sec

Where:

M = mass of the animals in kg

$D_{Rm}$ = depth of the receiver (animal) in meters

*Level B Harassment Risk Function (Behavioral Harassment)*—In 2006, NMFS issued the first MMPA authorization to allow the take of marine mammals incidental to MFAS (to the Navy for RIMPAC). For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B Harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 db SEL would be predicted to be taken by Level B Harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B Harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called ''exposure-response functions'' or ''dose-response functions'' in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur

over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the ''dose'' (in this case, the received level of sound) and that the probability of a response increases as the ''dose'' increases (see Figure 1a). In January 2009, NMFS issued three final rules governing the incidental take of marine mammals (within Navy's HRC, SOCAL, and Atlantic Fleet Active Sonar Training (AFAST)) that used a risk continuum to estimate the percent of marine mammals exposed to various levels of MFAS that would respond in a manner NMFS considers harassment.

The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures for other training and research programs. Examples of previous application include the Navy FEISs on the SURTASS LFA sonar (U.S. Department of the Navy, 2001c); the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (Office of Naval Research, 2001), and the Supplemental EIS for SURTASS LFA sonar (U.S. Department of the Navy, 2007d). As discussed earlier, factors other than received level (such as distance from or bearing to the sound source, context of animal at time of exposure) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these thresholds as new data become available and can be appropriately and effectively incorporated.

The particular acoustic risk functions developed by NMFS and the Navy (see Figures 1a and 1b) estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFAS/HFAS. The mathematical function (below) underlying this curve is a cumulative probability distribution adapted from a solution in Feller (1968) and was also used in predicting risk for the Navy's SURTASS LFA MMPA authorization as well.

$$R = \frac{1 - \left(\frac{L - B}{K}\right)^{-A}}{1 - \left(\frac{L - B}{K}\right)^{-2A}}$$

Where:

R = Risk (0–1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50-percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes) or 8 (mysticetes)

Detailed information on the above equation and its parameters is available in the MITT DEIS/OEIS and previous Navy documents listed above.

The inclusion of a special behavioral response criterion for beaked whales of the family Ziphiidae is new to these criteria. It has been speculated that beaked whales might have unusual sensitivities to sonar sound due to their likelihood of stranding in conjunction with MFAS use, even in areas where other species were more abundant (D'Amico *et al.* 2009), but there were not sufficient data to support a separate treatment for beaked whales until recently. With the recent publication of results from Blainville's beaked whale monitoring and experimental exposure studies on the instrumented Atlantic Undersea Test and Evaluation Center range in the Bahamas (McCarthy *et al.* 2011; Tyack *et al.* 2011), there are now statistically strong data suggesting that beaked whales tend to avoid both actual naval MFAS in real anti-submarine training scenarios as well as sonar-like signals and other signals used during controlled sound exposure studies in the same area. An unweighted 140 dB re 1 μPa sound pressure level threshold has been proposed by the Navy for significant behavioral effects for all beaked whales (family: Ziphiidae).

If more than one explosive event occurs within any given 24-hour period within a training or testing event, behavioral thresholds are applied to predict the number of animals that may be taken by Level B harassment. For multiple explosive events the behavioral threshold used in this analysis is 5 dB less than the TTS onset threshold (in sound exposure level). This value is derived from observed onsets of behavioral response by test subjects (bottlenose dolphins) during non-impulse TTS testing (Schlundt *et al.* 2000). Some multiple explosive events, such as certain naval gunnery exercises, may be treated as a single impulsive event because a few explosions occur closely spaced within a very short period of time (a few seconds). For single impulses at received sound levels below hearing loss thresholds, the most likely behavioral response is a brief alerting or orienting response. Since no further sounds follow the initial brief impulses, Level B take in the form of behavioral harassment beyond that associated with potential TTS would not be expected to occur. Explosive thresholds are summarized in Table 12 and further detailed in the Navy's LOA application.

Since impulse events can be quite short, it may be possible to accumulate multiple received impulses at sound pressure levels considerably above the energy-based criterion and still not be considered a behavioral take. The Navy treats all individual received impulses as if they were one second long for the purposes of calculating cumulative sound exposure level for multiple impulse events. For example, five air gun impulses, each 0.1 second long, received at 178 dB sound pressure level would equal a 175 dB sound exposure level, and would not be predicted as leading to a take. However, if the five 0.1-second pulses are treated as a 5-second exposure, it would yield an adjusted value of approximately 180 dB, exceeding the threshold. For impulses associated with explosions that have durations of a few microseconds, this assumption greatly overestimates effects based on sound exposure level metrics such as TTS and PTS and behavioral responses. Appropriate weighting values will be applied to the received impulse in one-third octave bands and the energy summed to produce a total weighted sound exposure level value. For impulsive behavioral criteria, the Navy's proposed weighting functions (detailed in the LOA application) are applied to the received sound level before being compared to the threshold.

TABLE 12—EXPLOSIVE THRESHOLDS

| Group | Species | Slight injury | | | Mortality |
|---|---|---|---|---|---|
| | | PTS | GI Tract | Lung | |
| Low-Frequency Cetaceans. | All mysticetes ..... | 187 dB SEL ($LF_{II}$) or 230 dB Peak SPL. | 237 dB SPL or 104 psi .... | Equation 1 .... | Equation 2. |

TABLE 12—EXPLOSIVE THRESHOLDS—Continued

| Group | Species | Slight injury | | | Mortality |
|---|---|---|---|---|---|
| | | PTS | GI Tract | Lung | |
| Mid-Frequency Cetaceans | Most delphinids, medium and large toothed whales. | 187 dB SEL ($MF_{II}$) or 230 dB Peak SPL. | | | |
| High-Frequency Cetaceans. | Porpoises and Kogia spp | 161 dB SEL ($HF_{II}$) or 201 dB Peak SPL. | | | |

$$= 39.1M^{1/3}\left(1+\frac{D_{Rm}}{10.081}\right)^{1/2} Pa-sec$$

$$= 91.4M^{1/3}\left(1+\frac{D_{Rm}}{10.081}\right)^{1/2} Pa-sec$$

**Marine Mammal Density Estimates**

A quantitative analysis of impacts on a species requires data on the abundance and distribution of the species population in the potentially impacted area. One metric for performing this type of analysis is density, which is the number of animals present per unit area. The Navy compiled existing, publically available density data for use in the quantitative acoustic impact analysis. There is no single source of density data for every area of the world, species, and season because of the costs, resources, and effort required to provide adequate survey coverage to sufficiently estimate density. Therefore, to estimate marine mammal densities for large areas like the MITT Study Area, the Navy compiled data from several sources. The Navy developed a hierarchy of density data sources to select the best available data based on species, area, and time (season). The resulting Geographic Information System database, called the Navy Marine Species Density Database, includes seasonal density values for every marine mammal species present within the MITT Study Area (DoN, 2013).

The primary data source for the MITT Study Area is the Navy-funded 2007 line-transect survey, which provides the only published density estimates based upon systematic sighting data collected specifically in this region (Fulling *et al.,* 2011). However, the source for density estimates for each species in provided in Table 3–2 of the Navy's LOA application.

*Quantitative Modeling for Impulsive and Non-Impulsive Sound*

The Navy performed a quantitative analysis to estimate the number of marine mammals that could be harassed by acoustic sources or explosives used during Navy training and testing activities. Inputs to the quantitative analysis included marine mammal density estimates; marine mammal depth occurrence distributions; oceanographic and environmental data; marine mammal hearing data; and criteria and thresholds for levels of potential effects. The quantitative analysis consists of computer-modeled estimates and a post-model analysis to determine the number of potential mortalities and harassments. The model calculates sound energy propagation from sonars, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse received by a marine mammal exceeds the thresholds for effects. The model estimates are then further analyzed to consider animal avoidance and implementation of mitigation measures, resulting in final estimates of effects due to Navy training and testing. This process results in a reduction to take numbers and is detailed in Chapter 6 (section 6.3) of the Navy's application.

A number of computer models and mathematical equations can be used to predict how energy spreads from a sound source (e.g. sonar or underwater detonation) to a receiver (e.g. dolphin or sea turtle). Basic underwater sound models calculate the overlap of energy and marine life using assumptions that account for the many, variable, and often unknown factors that can greatly influence the result. Assumptions in previous Navy models have intentionally erred on the side of overestimation when there are unknowns or when the addition of other variables was not likely to substantively change the final analysis. For example, because the ocean environment is extremely dynamic and information is often limited to a synthesis of data gathered over wide areas and requiring many years of research, known information tends to be an average of a seasonal or annual variation. The Equatorial Pacific El Nino disruption of the ocean-atmosphere system is an example of dynamic change where unusually warm ocean temperatures are likely to redistribute marine life and alter the propagation of underwater sound energy. Previous Navy modeling therefore made some assumptions indicative of a maximum theoretical propagation for sound energy (such as a perfectly reflective ocean surface and a flat seafloor). More complex computer models build upon basic modeling by factoring in additional variables in an effort to be more accurate by accounting for such things as bathymetry and an animal's likely presence at various depths.

The Navy has developed a set of data and new software tools for quantification of estimated marine mammal impacts from Navy activities. This new approach is the resulting evolution of the basic model previously used by the Navy and reflects a more complex modeling approach as described below. Although this more complex computer modeling approach accounts for various environmental factors affecting acoustic propagation, the current software tools do not consider the likelihood that a marine mammal would attempt to avoid repeated exposures to a sound or avoid an area of intense activity where a training or testing event may be focused. Additionally, the software tools do not consider the implementation of mitigation (e.g., stopping sonar transmissions when a marine mammal is within a certain distance of a ship or range clearance prior to detonations). In both of these situations, naval activities are modeled as though an activity would occur regardless of proximity to marine mammals and without any horizontal movement by the animal away from the sound source or human activities (e.g., without accounting for likely animal avoidance). Therefore, the final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures.

The steps of the quantitative analysis of acoustic effects, the values that went into the Navy's model, and the resulting ranges to effects are detailed in Chapter 6 of the Navy's LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

*Take Request*

The MITT DEIS/OEIS considered all training and testing activities proposed to occur in the Study Area that have the potential to result in the MMPA defined take of marine mammals. The stressors associated with these activities included the following:

- Acoustic (sonar and other active acoustic sources, explosives, weapons firing, launch and impact noise, vessel noise, aircraft noise);
- Energy (electromagnetic devices);
- Physical disturbance or strikes (vessels, in-water devices, military expended materials, seafloor devices);
- Entanglement (fiber optic cables, guidance wires, parachutes);
- Ingestion (munitions, military expended materials other than munitions);
- Indirect stressors (impacts to habitat [sediment and water quality, air quality] or prey availability).

The Navy determined, and NMFS agrees, that three stressors could potentially result in the incidental taking of marine mammals from training and testing activities within the Study Area: (1) Non-impulse acoustic stressors (sonar and other active acoustic sources), (2) impulse acoustic stressors (explosives), and (3) vessel strikes. Non-impulsive stressors have the potential to result in incidental takes of marine mammals by Level A or Level B harassment. Impulsive acoustic stressors have the potential to result in incidental takes of marine mammals by harassment, injury, or mortality. Vessel strikes have the potential to result in incidental take from direct injury and/or mortality.

*Training and Testing Activities*—Based on the Navy's model and post-model analysis (described in detail in Chapter 6 of their LOA application), Table 13 summarizes the Navy's take request for training and testing activities for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur) and the summation over a 5-year period (annual events occurring five times and non-annual events occurring three times). Table 14 summarizes the Navy's take request for training and testing activities by species from the modeling estimates.

While the Navy does not anticipate any beaked whale strandings or mortalities from sonar and other active sources, in order to account for unforeseen circumstances that could lead to such effects the Navy requests the annual take, by mortality, of two beaked whales a year as part of training and testing activities.

Vessel strike to marine mammals is not associated with any specific training or testing activity but rather a limited, sporadic, and accidental result of Navy vessel movement within the Study Area. In order to account for the accidental nature of vessel strikes to large whales in general, and the potential risk from any vessel movement within the Study Area, the Navy is seeking take authorization in the event a Navy vessel strike does occur while conducting training or testing activities. However, since species identification has not been possible in most vessel strike cases, the Navy cannot quantifiably predict what species may be taken. Therefore, the Navy seeks take authorization by vessel strike for any combined number of large whale species to include fin whale, blue whale, humpback whale, Bryde's whale, Omura's whale, sei whale, minke whale, or sperm whale. The Navy requests takes of large marine mammals over the course of the 5-year regulations from training and testing activities as discussed below:

- The take by vessel strike during training or testing activities in any given year of no more than one large whale of any species including fin whale, blue whale, humpback whale, Bryde's whale, Omura's whale, sei whale, minke whale, or sperm whale. The take by vessel strike of no more than five large whales from training and testing activities over the course of the five years of the MITT regulations.

There are no records of any Navy vessel strikes to marine mammals in the MITT Study Area. In areas outside the MITT Study Area (e.g., Hawaii and Southern California), there have been Navy strikes of larges whales. However, these areas differ significantly from the MITT Study Area given that both Hawaii and Southern California have a much higher number of Navy vessel activities and much higher densities of large whales. However, in order to account for the accidental nature of ship strikes in general, and potential risk from any vessel movement within the MITT Study Area, the Navy is seeking take authorization in the event a Navy ship strike does occur within the MITT Study Area during the 5-year authorization period.

TABLE 13—SUMMARY OF ANNUAL AND 5-YEAR TAKE REQUEST FOR TRAINING AND TESTING ACTIVITIES

| MMPA Category | Source | Training and testing activities | |
|---|---|---|---|
| | | Annual authorization sought [1] | 5-Year authorization sought [2] |
| Mortality | Vessel strike | No more than 1 large whale mortality in any given year [4]. | No more than 5 large whale mortalities over five years.[4] |
| Mortality | Unspecified [3] | 2 mortalities to beaked whales [3] | 10 mortalities to beaked whales over five years.[3] |
| Level A | Impulse and Non-Impulse. | 56—Species specific data shown in Table 15 | 280—Species specific data shown in Table 15. |
| Level B | Impulse and Non-Impulse. | 81,906—Species specific data shown in Table 15. | 409,530—Species specific data shown in Table 15. |

[1] These numbers constitute the total for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur).

[2] These numbers constitute the summation over a 5-year period with annual events occurring five times and non-annual events occurring three times.

[3] The Navy's NAEMO model did not quantitatively predict these mortalities. Navy, however, is seeking this particular authorization given sensitivities these species may have to anthropogenic activities. Request includes 2 Ziphidae beaked whale annually to include any combination of Cuvier's beaked whale, Longman's beaked whale, and unspecified Mesoplodon sp. (not to exceed 10 beaked whales total over the 5-year length of requested authorization).

[4] The Navy cannot quantifiably predict that proposed takes from training or testing will be of any particular species, and therefore seeks take authorization for any combination of large whale species (fin whale, blue whale, humpback whale, Bryde's whale, Omura's whale, sei whale, minke whale, or sperm whale).

TABLE 14—SPECIES-SPECIFIC TAKE REQUEST FROM MODELING ESTIMATES OF IMPULSIVE AND NON-IMPULSIVE SOURCE EFFECTS FOR ALL TRAINING AND TESTING ACTIVITIES

| Species | Annually [1] | | | Total over 5-year rule [2] | | |
|---|---|---|---|---|---|---|
| | Level B | Level A | Mortality | Level B | Level A | Mortality |
| Blue whale | 28 | 0 | 0 | 140 | 0 | 0 |
| Fin whale | 28 | 0 | 0 | 140 | 0 | 0 |
| Humpback whale | 860 | 0 | 0 | 4,300 | 0 | 0 |
| Sei whale | 319 | 0 | 0 | 1,595 | 0 | 0 |
| Sperm whale | 506 | 0 | 0 | 2,530 | 0 | 0 |
| Bryde's whale | 398 | 0 | 0 | 1,990 | 0 | 0 |
| Minke whale | 101 | 0 | 0 | 505 | 0 | 0 |
| Omura's whale | 103 | 0 | 0 | 515 | 0 | 0 |
| Pygmy sperm whale | 5,579 | 15 | 0 | 27,895 | 75 | 0 |
| Dwarf sperm whale | 14,217 | 41 | 0 | 71,085 | 205 | 0 |
| Killer whale | 84 | 0 | 0 | 420 | 0 | 0 |
| False killer whale | 555 | 0 | 0 | 2,775 | 0 | 0 |
| Pygmy killer whale | 105 | 0 | 0 | 525 | 0 | 0 |
| Short-finned pilot whale | 1,815 | 0 | 0 | 9,075 | 0 | 0 |
| Melon-headed whale | 2,085 | 0 | 0 | 10,425 | 0 | 0 |
| Bottlenose dolphin | 741 | 0 | 0 | 3,705 | 0 | 0 |
| Pantropical spotted dolphin | 12,811 | 0 | 0 | 64,055 | 0 | 0 |
| Striped dolphin | 3,298 | 0 | 0 | 16,490 | 0 | 0 |
| Spinner dolphin | 589 | 0 | 0 | 2,945 | 0 | 0 |
| Rough toothed dolphin | 1,819 | 0 | 0 | 9,095 | 0 | 0 |
| Fraser's dolphin | 2,572 | 0 | 0 | 12,860 | 0 | 0 |
| Risso's dolphin | 505 | 0 | 0 | 2,525 | 0 | 0 |
| Cuvier's beaked whale | 22,541 | 0 | 0 | 112,705 | 0 | 0 |
| Blainville's beaked whale | 4,426 | 0 | 0 | 22,130 | 0 | 0 |
| Longman's beaked whale | 1,924 | 0 | 0 | 9,620 | 0 | 0 |
| Ginkgo-toothed beaked whale | 3,897 | 0 | 0 | 19,485 | 0 | 0 |

[1] These numbers constitute the total for an annual maximum year (a notional 12-month period when all annual and non-annual events could occur).

[2] These numbers constitute the summation over a 5-year period with annual events occurring five times and non-annual events occurring three times.

**Analysis and Preliminary Determination**

Negligible impact is ''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'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the maximum amount of sonar and other acoustic source use or detonations that the Navy would conduct. There may be some flexibility in that the exact number of hours, items, or detonations may vary from year to year, but take totals are not authorized to exceed the 5-year totals indicated in Table 13. Furthermore the Navy's take request is based on their model and post-model analysis. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. The requested number of Level B takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (i.e., exposures above the Level B harassment threshold) that would occur. Depending on the location, duration, and frequency of activities, along with the distribution and movement of marine mammals, individual animals may be exposed to impulse or non-impulse sounds at or above the Level B harassment threshold on multiple days. However, the Navy is currently unable to estimate the number of individuals that may be taken during training and testing activities. The model results estimate the total number of takes that may occur to a smaller number of individuals. While the model shows that an increased number of exposures may take place due to an increase in events/activities and ordnance (compared to the 2010 rulemaking for the MIRC), the types and severity of individual responses to training and testing activities are not expected to change.

*Behavioral Harassment*

As discussed previously in this document, marine mammals can respond to MFAS/HFAS in many different ways, a subset of which qualifies as harassment (see Behavioral Harassment Section). One thing that the Level B Harassment take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.) in other

cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. For MFAS/HFAS, the Navy provided information (Table 15) estimating the percentage of behavioral harassment that would occur within the 6-dB bins (without considering mitigation or avoidance). As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal. As illustrated below, the majority (about 72 percent, at least for hull-mounted sonar, which is responsible for most of the sonar takes) of calculated takes from MFAS result from exposures less than 156 dB. Less than 1 percent of the takes are expected to result from exposures above 174 dB.

TABLE 15—NON-IMPULSIVE RANGES IN 6-DB BINS AND PERCENTAGE OF BEHAVIORAL HARASSMENTS

| Received level | Sonar Bin MF1 (e.g., SQS–53; ASW hull mounted sonar) | | Sonar Bin MF4 (e.g., AQS–22; ASW dipping sonar) | | Sonar Bin MF5 (e.g., SSQ–62; ASW sonobuoy) | | Sonar Bin HF4 (e.g., SQQ–32; MIW Sonar) | |
|---|---|---|---|---|---|---|---|---|
| | Distance at which levels occur within radius of source (m) | Percentage of behavioral harassments occurring at given levels | Distance at which levels occur within radius of source (m) | Percentage of behavioral harassments occurring at given levels | Distance at which levels occur within radius of source (m) | Percentage of behavioral harassments occurring at given levels | Distance at which levels occur within radius of source (m) | Percentage of behavioral harassments occurring at given levels |
| **Low Frequency Cetaceans** | | | | | | | | |
| 120 ≤ SPL < 126 ..... | 183,000–133,000 | <1 | 71,000–65,000 | <1 | 18,000–13,000 | <1 | 2,300–1,700 | <1 |
| 126 ≤ SPL < 132 ..... | 133,000 126,000 | <1 | 65,000–60,000 | <1 | 13,000–7,600 | <1 | 1,700–1,200 | <1 |
| 132 ≤ SPL < 138 ..... | 126,000–73,000 | <3 | 60,000–8,200 | 42 | 7,600–2,800 | 12 | 1,200–750 | <1 |
| 138 ≤ SPL < 144 ..... | 73,000–67,000 | <1 | 8,200–3,500 | 10 | 2,800–900 | 26 | 750–500 | 5 |
| 144 ≤ SPL < 150 ..... | 67,000–61,000 | 3 | 3,500–1,800 | 12 | 900–500 | 15 | 500–300 | 17 |
| 150 ≤ SPL < 156 ..... | 61,000–17,000 | 68 | 1,800–950 | 15 | 500–250 | 21 | 300–150 | 34 |
| 156 ≤ SPL < 162 ..... | 17,000–10,300 | 12 | 950–450 | 13 | 250–100 | 20 | 150–100 | 20 |
| 162 ≤ SPL < 168 ..... | 10,200 5,600 | 9 | 450–200 | 6 | 100–<50 | 6 | 100–<50 | 24 |
| 168 ≤ SPL < 174 ..... | 5,600–1,600 | 6 | 200–100 | 2 | <50 | <1 | <50 | <1 |
| 174 ≤ SPL < 180 ..... | 1,600–800 | <1 | 100–<50 | <1 | <50 | <1 | <50 | <1 |
| 180 ≤ SPL < 186 ..... | 800–400 | <1 | <50 | <1 | <50 | <1 | <50 | <1 |
| 186 ≤ SPL < 192 ..... | 400–200 | <1 | <50 | <1 | <50 | <1 | <50 | <1 |
| 192 ≤ SPL < 198 ..... | 200–100 | <1 | <50 | <1 | <50 | <1 | <50 | <1 |
| **Mid-Frequency Cetaceans** | | | | | | | | |
| 120 ≤ SPL < 126 ..... | 184,000–133,000 | <1 | 72,000–66,000 | <1 | 19,000–15,000 | <1 | 3,600–2,800 | <1 |
| 126 ≤ SPL < 132 ..... | 133,000–126,000 | <1 | 66,000–60,000 | <1 | 15,000–8,500 | <1 | 2,800–2,100 | <1 |
| 132 ≤ SPL < 138 ..... | 126,000–73,000 | <1 | 60,000–8,300 | 41 | 8,500–3,300 | 3 | 2,100–1,500 | <1 |
| 138 ≤ SPL < 144 ..... | 73,000–67,000 | <1 | 8,300–3,600 | 10 | 3,300–1,000 | 12 | 1,500–1,000 | 3 |
| 144 ≤ SPL < 150 ..... | 67,000–61,000 | 3 | 3,600–1,900 | 12 | 1,000–500 | 10 | 1,00–700 | 10 |
| 150 ≤ SPL < 156 ..... | 61,000–18,000 | 68 | 1,900–950 | 15 | 500–300 | 22 | 700–450 | 21 |
| 156 ≤ SPL < 162 ..... | 18,000–10,300 | 13 | 950–480 | 12 | 300–150 | 27 | 450–250 | 32 |
| 162 ≤ SPL < 168 ..... | 10,300–5,700 | 9 | 480–200 | 7 | 150–<50 | 25 | 250–150 | 19 |
| 168 ≤ SPL < 174 ..... | 5,700–1,700 | 6 | 200–100 | 2 | <50 | <1 | 150–100 | 9 |
| 174 ≤ SPL < 180 ..... | 1,700–900 | <1 | 100–<50 | <1 | <50 | <1 | 100–<50 | 6 |
| 180 ≤ SPL < 186 ..... | 900–400 | <1 | <50 | <1 | <50 | <1 | <50 | <1 |
| 186 ≤ SPL < 192 ..... | 400–200 | <1 | <50 | <1 | <50 | <1 | <50 | <1 |
| 192 ≤ SPL < 198 ..... | 200–100 | <1 | <50 | <1 | <50 | <1 | <50 | <1 |

ASW: anti-submarine warfare; MIW: mine warfare; m: meter; SPL: sound pressure level.

Although the Navy has been monitoring to discern the effects of MFAS/HFAS on marine mammals since 2006, and research on the effects of MFAS is advancing, our understanding of exactly how marine mammals in the Study Area will respond to MFAS/HFAS is still limited. The Navy has submitted reports from more than 60 major exercises across Navy range complexes that indicate no behavioral disturbance was observed. One cannot conclude from these results that marine mammals were not harassed from MFAS/HFAS, as a portion of animals within the area of concern were not seen (especially those more cryptic, deep-diving species, such as beaked whales or *Kogia* spp.), the full series of behaviors that would more accurately show an important change is not typically seen (i.e., only the surface behaviors are observed), and some of the non-biologist watchstanders might not be well-qualified to characterize behaviors. However, one can say that the animals that were observed did not respond in any of the obviously more severe ways, such as panic, aggression, or anti-predator response.

*Diel Cycle*

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure (when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

In the previous section, we discussed that potential behavioral responses to MFAS/HFAS that fall into the category of harassment could range in severity. By definition, for military readiness activities, takes by behavioral harassment involve the disturbance or likely disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. These reactions would, however, be more of a concern if they were expected to last over 24 hrs or be repeated in subsequent days. However, vessels with hull-mounted active sonar

are typically moving at speeds of 10–15 knots, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Animals may be exposed to MFAS/HFAS for more than one day or on successive days. However, because neither the vessels nor the animals are stationary, significant long-term effects are not expected.

Most planned explosive exercises are of a short duration (1–6 hours). Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time.

TTS

As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.,* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). The more powerful mid-frequency sources used have center frequencies between 3.5 and 8 kHz and the other unidentified mid-frequency sources are, by definition, less than 10 kHz, which suggests that TTS induced by any of these mid-frequency sources would be in a frequency band somewhere between approximately 2 and 20 kHz. There are fewer hours of high-frequency source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 20 and 100 kHz, which means that TTS could range up to 200 kHz; however, high-frequency systems are typically used less frequently and for shorter time periods than surface ship and aircraft mid-frequency systems, so TTS from these sources is even less likely). TTS from explosives would be broadband. Vocalization data for each species was provided in the Navy's LOA application.

2. Degree of the shift (i.e., how many dB is the sensitivity of the hearing reduced by)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this document. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the lookouts and the nominal speed of an active sonar vessel (10–15 knots). In the TTS studies, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. However, MFAS emits a nominal ping every 50 seconds, and incurring those levels of TTS is highly unlikely.

3. Duration of TTS (recovery time)—In the TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), though in one study (Finneran *et al.,* 2007), recovery took 4 days.

Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during MFAS/HFAS training exercises in the Study Area, it is unlikely that marine mammals would ever sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and any incident of TTS would likely be far less severe due to the short duration of the majority of the exercises and the speed of a typical vessel). Also, for the same reasons discussed in the Diel Cycle section, and because of the short distance within which animals would need to approach the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS (the source from which TTS would most likely be sustained because the higher source level and slower attenuation make it more likely that an animal would be exposed to a higher received level) would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations. If impaired, marine mammals would typically be aware of their impairment and implement behaviors to compensate (see Acoustic Masking or Communication Impairment section), though these compensations may incur energetic costs.

*Acoustic Masking or Communication Impairment*

Masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which continues beyond the duration of the signal. Standard MFAS nominally pings every 50 seconds for hull-mounted sources. For the sources for which we know the pulse length, most are significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of microseconds. For hull-mounted active sonar, though some of the vocalizations that marine mammals make are less than one second long, there is only a one in 50 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Alternately, when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked. Masking effects from MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

*PTS, Injury, or Mortality*

NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels of active sonar necessary to induce injury by moving away from or at least modifying their path to avoid a close approach. Additionally, in the unlikely event that an animal approaches the sonar vessel at a close distance, NMFS believes that the mitigation measures (i.e., shutdown/powerdown zones for MFAS/HFAS) would typically ensure that animals would not be exposed to injurious levels of sound. As discussed previously, the Navy utilizes both aerial (when available) and passive acoustic monitoring (during all ASW exercises) in addition to watchstanders on vessels to detect marine mammals for mitigation implementation.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur PTS, the likely speed of the vessel (nominal 10–15 knots) would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of PTS. As mentioned previously and in relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious dependent upon the degree of PTS and the frequency band it is in, and many animals are able to compensate for the shift, although it may include energetic costs.

As discussed previously, marine mammals (especially beaked whales) could potentially respond to MFAS at a received level lower than the injury threshold in a manner that indirectly results in the animals stranding. The exact mechanism of this potential response, behavioral or physiological, is not known. When naval exercises have been associated with strandings in the past, it has typically been when three or more vessels are operating simultaneously, in the presence of a strong surface duct, and in areas of constricted channels, semi-enclosed areas, and/or steep bathymetry. Based on the number of occurrences where strandings have been definitively associated with military active sonar versus the number of hours of active sonar training that have been conducted, we believe that the probability is small that this will occur. Lastly, an active sonar shutdown protocol for strandings involving live animals milling in the water minimizes the chances that these types of events turn into mortalities.

Although there have been no recorded Navy vessel strikes of marine mammals in the MITT Study Area to date, NMFS is proposing to authorize takes by mortality of a limited number of large whales from vessel strike.

*Species-Specific Analysis*

In the discussions below, the ''acoustic analysis'' refers to the Navy's model results and post-model analysis. The Navy performed a quantitative analysis to estimate the number of marine mammals that could be harassed by acoustic sources or explosives used during Navy training and testing activities. Inputs to the quantitative analysis included marine mammal density estimates; marine mammal depth occurrence distributions; oceanographic and environmental data; marine mammal hearing data; and criteria and thresholds for levels of potential effects. Marine mammal densities used in the model may overestimate actual densities when species data is limited and for species with seasonal migrations. The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential mortalities and harassments. The model calculates sound energy propagation from sonars, other active acoustic sources, and explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse received by a marine mammal exceeds the thresholds for effects. The model estimates are then further analyzed to consider animal avoidance and implementation of mitigation measures, resulting in final estimates of effects due to Navy training and testing. It is important to note that the Navy's take estimates represent the total number of takes and not the number of individuals taken, as a single individual may be taken multiple times over the course of a year.

Although this more complex computer modeling approach accounts for various environmental factors affecting acoustic propagation, the current software tools do not consider the likelihood that a marine mammal would attempt to avoid repeated exposures to a sound or avoid an area of intense activity where a training or testing event may be focused. Additionally, the software tools do not consider the implementation of mitigation (e.g., stopping sonar transmissions when a marine mammal is within a certain distance of a ship or range clearance prior to detonations). In both of these situations, naval activities are modeled as though an activity would occur regardless of proximity to marine mammals and without any horizontal movement by the animal away from the sound source or human activities (e.g., without accounting for likely animal avoidance). The initial model results overestimate the number of takes (as described previously), primarily by behavioral disturbance. The final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation on Level A harassment and mortality estimates and the possibility that marine mammals would avoid continued or repeated sound exposures. NMFS provided input to the Navy on this process and the Navy's qualitative analysis is described in detail in section 6.3 of their LOA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

*Mysticetes*—The Navy's acoustic analysis indicates that numerous exposures of mysticete species to sound levels likely to result in Level B harassment may occur, mostly from sonar and other active acoustic stressors associated with mostly training and some testing activities in the Study Area. Of these species, humpback, blue, fin, and sei whales are listed as endangered under the ESA. Level B takes are anticipated to be in the form of behavioral harassment and no injurious takes of humpback, blue, fin, or sei whales from sonar, or other active acoustic stressors are expected. The majority of acoustic effects to mysticetes from sonar and other active sound sources during training activitites would be primarily from anti-submarine warfare events involving surface ships and hull mounted (mid-frequency) sonar. Most Level B harassments to mysticetes from sonar would result from received levels less than 152 dB SPL. High-frequency systems are not within mysticetes' ideal hearing range and it is unlikely that they would cause a significant behavioral reaction. The implementation of mitigation and the sightability of mysticetes (due to their large size) further reduce the potential for a significant behavioral reaction or a threshold shift to occur. Furthermore, there are no known areas of significance for breeding, calving, or feeding within the MITT Study Area.

In addition to Level B takes, the Navy is requesting no more than five large whale mortalities over 5 years (no more than one large whale mortality in a given year) due to vessel strike during training and testing activities. Of the five takes over 5 years, no more than two takes of any one species of blue whale, fin whale, humpback whale, sei whale, or sperm whale is proposed. The Navy provided a detailed analysis of strike data in section 6.3.4 of their LOA application. To date, there have been no recorded Navy vessel strikes in the MITT Study Area. However, over a period of 20+ years (1991 to 2013), there have been 16 Navy vessel strikes in the SOCAL Range Complex and five Navy vessel strikes in HRC. The number of mortalities from vessel strike is not expected to be an increase over the past decade, but rather NMFS is proposing to authorize these takes for the first time.

*Sperm Whales*—The Navy's acoustic analysis indicates that 506 exposures of sperm whales to sound levels likely to result in Level B harassment may occur in the MITT Study Area each year from sonar or other active acoustic stressors during training and testing activities.

These Level B takes are anticipated to be in the form of behavioral harassment and no injurious takes of sperm whales from sonar, other active acoustic stressors, or explosives are requested or proposed for authorization. Sperm whales have shown resilience to acoustic and human disturbance, although they may react to sound sources and activities within a few kilometers. Sperm whales that are exposed to activities that involve the use of sonar and other active acoustic sources may alert, ignore the stimulus, avoid the area by swimming away or diving, or display aggressive behavior. Some (but not all) sperm whale vocalizations might overlap with the MFAS/HFAS TTS frequency range, which could temporarily decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFAS/HFAS. The majority of Level B takes are expected to be in the form of mild responses.

In addition to Level B takes, the Navy is requesting no more than five large whale mortalities over 5 years (no more than one large whale mortality in a given year) due to vessel strike during training and testing activities, which includes sperm whales. However, of the five takes over 5 years, no more than two takes of sperm whale is proposed. No areas of specific importance for reproduction or feeding for sperm whales have been identified in the MITT Study Area.

*Pygmy and Dwarf Sperm Whales*—The Navy's acoustic analysis indicates that 19,796 exposures of pygmy and dwarf sperm whales to sound levels likely to result in Level B harassment may occur from sonar and other active acoustic stressors and explosives associated with training and testing activities in the Study Area. The Navy's acoustic analysis also indicates that 41 exposures of dwarf sperm whale and 15 exposures of pygmy sperm whale to sound levels likely to result in Level A harassment may occur from active acoustic stressors and explosions. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic. These species tend to avoid human activity and presumably anthropogenic sounds. Pygmy and dwarm sperm whales may startle and leave the immediate area of activity, reducing the potential impacts. Significant behavioral reactions seem more likely than with most other odontocetes; however, it is unlikely that animals would receive multiple exposures over a short period of time, allowing animals to recover lost resources (e.g., food) or opportunities (e.g., mating). Therefore, long-term consequences for individual Kogia or their respective populations are not expected. Furthermore, many explosions actually occur upon impact with above-water targets. However, sources such as these were modeled as exploding at 1 meter depth, which overestimates the potential effects.

*Dolphins and Small Whales*—The Navy's acoustic analysis indicates that 12 species of delphinid (dolphins and small whales) may be exposed to sound levels likely to result in Level B harassment: killer whale, false killer whale, pygmy killer whale, short-finned pilot whale, melon-headed whale, bottlenose dolphin, pantropical spotted dolphin, striped dolphin, spinner dolphin, rough toothed dolphin, Fraser's dolphin, and Risso's dolphin. All of these takes are anticipated to be in the form of behavioral harassment and no injurious takes of delphinids from active acoustic stressors or explosives are requested or proposed for authorization. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic.

*Beaked Whales*—The Navy's acoustic analysis indicates that four species of beaked whale may be exposed to sound levels likely to result in Level B harassment. These takes are anticipated to be in the form of behavioral harassment and no injurious takes of dolphins from active acoustic stressors or explosives are requested or proposed for authorization. Behavioral responses can range from a mild orienting response, or a shifting of attention, to flight and panic. In addition, the Navy is requesting take by mortality of an average of two beaked whales per year. The Navy's model did not quantitatively predict these mortalities; however, beaked whales may be more sensitive to anthropogenic activities. After decades of the Navy conducting similar activities in the MITT Study Area without observed incident, NMFS does not expect injury or mortality of beaked whales to occur as a result of Navy activities. No areas of specific importance for reproduction or feeding for beaked whales have been identified in the MITT Study Area.

Some beaked whale vocalizations might overlap with the MFAS/HFAS frequency range, which could potentially decrease an animal's sensitivity to the calls of conspecifics or returning echolocation signals for a limited amount of time. However, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to sonar and other active acoustic sources. The Navy does not predict any beaked whales to be exposed to sound levels associated with PTS or injury.

As discussed previously, scientific uncertainty exists regarding the potential contributing causes of beaked whale strandings and the exact behavioral or physiological mechanisms that can potentially lead to the ultimate physical effects (stranding and/or death) that have been documented in a few cases. Although NMFS does not expect injury or mortality of any beaked whale species to occur as a result of the Navy's activities involving active acoustic sources, there remains the potential for the these sources to contribute to the mortality of beaked whales. Consequently, NMFS proposes to authorize mortality and we consider the 10 potential mortalities (over a 5-year period) in our negligible impact determination (NMFS only intends to authorize a total of 10 beaked whale mortalities, but since they could be of any single species, we consider the effects of 10 mortalities of any of the four species).

*Preliminary Determination*

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the total marine mammal take form the Navy's training and testing activities in the MITT Study Area will have a negligible impact on the affected marine mammal species or stocks.

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Endangered Species Act (ESA)**

There are five marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the Study Area: blue whale, humpback whale, fin whale, sei whale, and sperm whale. The Navy will consult with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of the MMPA incidental take regulations

and for MITT activities. Consultation will be concluded prior to a determination on the issuance of the final rule and LOA.

**National Environmental Policy Act (NEPA)**

NMFS has participated as a cooperating agency on the MITT DEIS/OEIS, which was published on September 13, 2013 (78 FR 56682). The MITT DEIS/OEIS is available online at: *http://www.mitt-eis.com*. NMFS intends to adopt the Navy's final MITT EIS/OEIS (FEIS/OEIS), if adequate and appropriate. Currently, we believe that the adoption of the Navy's MITT FEIS/OEIS will allow NMFS to meet its responsibilities under NEPA for the issuance of regulations and LOAs for MITT. If the Navy's MITT FEIS/OEIS is deemed inadequate, NMFS would supplement the existing analysis to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

**Classification**

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

**List of Subjects in 50 CFR Part 218**

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: March 5, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

## PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

**Authority:** 16 U.S.C. 1361 et seq.

■ 2. Subpart J is added to part 218 to read as follows:

### Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

Sec.
218.90 Specified activity and specified geographical region.
218.91 Effective dates and definitions.
218.92 Permissible methods of taking.
218.93 Prohibitions.
218.94 Mitigation.
218.95 Requirements for monitoring and reporting.
218.96 Applications for Letters of Authorization
218.97 Letters of Authorization.
218.98 Renewal and Modifications of Letters of Authorization and Adaptive Management.

### Subpart J—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training and Testing (MITT)

#### § 218.90 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the MITT Study Area, which includes the MIRC and areas to the north and west. The Study Area includes established ranges, operating areas, warning areas, and special use airspace in the region of the Mariana Islands that are part of the MIRC, its surrounding seas, and a transit corridor to the Hawaii Range Complex. The Study Area also includes Navy pierside locations where sonar maintenance and testing may occur.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) Non-impulsive Sources Used During Training and Testing:

(i) Low-frequency (LF) Source Classes:

(A) LF4—an average of 123 hours per year.

(B) LF5—an average of 11 hours per year.

(C) LF6—an average of 40 hours per year.

(ii) Mid-frequency (MF) Source Classes:

(A) MF1—an average of 1,872 hours per year.

(B) MF2—an average of 625 hours per year.

(C) MF3—an average of 192 hours per year.

(D) MF4—an average of 214 hours per year.

(E) MF5—an average of 2,588 items per year.

(F) MF6—an average of 33 items per year.

(G) MF8—an average of 123 hours per year.

(H) MF9—an average of 47 hours per year.

(I) MF10—an average of 231 hours per year.

(J) MF11—an average of 324 hours per year.

(K) MF12—an average of 656 hours per year.

(iii) High-frequency (HF) and Very High-frequency (VHF) Source Classes:

(A) HF1—an average of 113 hours per year.

(B) HF4—an average of 1,060 hours per year.

(C) HF5—an average of 336 hours per year.

(D) HF6—an average of 1,173 hours per year.

(iv) Anti-Submarine Warfare (ASW) Source Classes:

(A) ASW1—an average of 144 hours per year.

(B) ASW2—an average of 660 items per year.

(C) ASW3—an average of 3,935 hours per year.

(D) ASW4—an average of 32 items per year.

(v) Torpedoes (TORP) Source Classes:

(A) TORP1—an average of 115 items per year.

(B) TORP2—an average of 62 items per year.

(vi) Acoustic Modems (M):

(A) M3—an average of 112 hours per year.

(B) [Reserved]

(vii) Swimmer Detection Sonar (SD):

(A) SD1—an average 2,341 hours per year.

(1) Impulsive Source Detonations During Training and Testing:

(i) Explosive Classes:

(A) E1 (0.1 to 0.25 lb NEW)—an average of 10,140 detonations per year.

(B) E2 (0.26 to 0.5 lb NEW)—an average of 106 detonations per year.

(C) E3 (>0.5 to 2.5 lb NEW)—an average of 932 detonations per year.

(D) E4 (>2.5 to 5 lb NEW)—an average of 420 detonations per year.

(E) E5 (>5 to 10 lb NEW)—an average of 684 detonations per year.

(F) E6 (>10 to 20 lb NEW)—an average of 76 detonations per year.

(G) E8 (>60 to 100 lb NEW)—an average of 16 detonations per year.

(H) E9 (>100 to 250 lb NEW)—an average of 4 detonations per year.

(I) E10 (>250 to 500 lb NEW)—an average of 12 detonations per year.

(J) E11 (>500 to 650 lb NEW)—an average of 6 detonations per year.

(K) E12 (>650 to 2,000 lb NEW)—an average of 184 detonations per year.

(ii) [Reserved]

**§ 218.91 Effective dates and definitions.**

(a) Regulations are effective March 18, 2014 through March 18, 2019.

(b) The following definitions are utilized in these regulations:

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place within an OPAREA where a Major Training Event (MTE) occurs and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in paragraph (b)(1)(ii) of this section found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, *Kogia* spp., Risso's dolphin, melon-headed whale, pilot whale, humpback whale, sperm whale, blue whale, fin whale, sei whale, or monk seal.

(iii) A group of two or more cetaceans of any species exhibiting indicators of distress.

(2) *Shutdown*—The cessation of active sonar operation or detonation of explosives within 14 nautical miles of any live, in the water, animal involved in a USE.

**§ 218.92 Permissible methods of taking.**

(a) Under a Letter of Authorization (LOA) issued pursuant to § 218.97, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 218.90, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The activities identified in § 218.90(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.90(c) is limited to the following species, by the identified method of take:

(1) Level A and B Harassment for all Training and Testing Activities:

(i) Mysticetes:

(A) Blue whale (*Balaenoptera musculus*)

(B) Bryde's whale (*Balaenoptera edeni*)

(C) Fin whale (*Balaenoptera physalus*)

(D) Humpback whale (*Megaptera novaeangliae*)

(E) Minke whale (*Balaenoptera acutorostrata*)

(F) Sei whale (*Balaenoptera borealis*)

(G) Omura's whale (*Balaenoptera omurai*)

(ii) Odontocetes:

(A) Blainville's beaked whale (*Mesoplodon densirostris*)

(B) Bottlenose dolphin (*Tursiops truncatus*)

(C) Cuvier's beaked whale (*Ziphius cavirostris*)

(D) Dwarf sperm whale (*Kogia sima*)

(E) False killer whale (*Pseudorca crassidens*)

(F) Fraser's dolphin (*Lagenodelphis hosei*)

(G) Gingko-toothed beaked whale (*Mesoplodon ginkgodens*)

(H) Killer whale (*Orcinus orca*)

(I) Longman's beaked whale (*Indopacetus pacificus*)

(J) Melon-headed whale (*Peponocephala electra*)

(K) Pantropical spotted dolphin (*Stenella attenuata*)

(L) Pygmy killer whale (*Feresa attenuata*)

(M) Pygmy sperm whale (*Kogia breviceps*)

(N) Risso's dolphin (*Grampus griseus*)

(O) Rough-toothed dolphin (*Steno bredanensis*)

(P) Short-finned pilot whale (*Globicephala macrorhynchus*)

(Q) Sperm whale (*Physeter macrocephalus*)

(R) Spinner dolphin (*Stenella longirostris*)

(S) Striped dolphin (*Stenella coerulealba*)

(2) Mortality for all Training and Testing Activities:

(i) No more than 10 beaked whale mortalities.

(ii) No more than 5 large whale mortalities (no more than 1 in any given year) from vessel strike.

**§ 218.93 Prohibitions.**

Notwithstanding takings contemplated in § 218.92 and authorized by an LOA issued under §§ 216.106 and 218.97 of this chapter, no person in connection with the activities described in § 218.90 may:

(a) Take any marine mammal not specified in § 218.92(c);

(b) Take any marine mammal specified in § 218. 92(c) other than by incidental take as specified in § 218.92(c);

(c) Take a marine mammal specified in § 218.92(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or an LOA issued under §§ 216.106 and 218.97.

**§ 218.94 Mitigation.**

(a) When conducting training and testing activities, as identified in § 218.90, the mitigation measures contained in the LOA issued under §§ 216.106 and 218.97 of this chapter must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts*—The following are protective measures concerning the use of lookouts.

(i) Lookouts positioned on surface ships will be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing buffer zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described above in § 218.94 (a)(1)(i).

(iii) Lookout measures for non-impulsive sound:

(A) With the exception of vessels less than 65 ft (20 m) in length and the Littoral Combat Ship (and similar vessels which are minimally manned), ships using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea will have two lookouts at the forward position of the vessel. For the purposes of this rule, low-frequency active sonar does not include surface towed array surveillance system low-frequency active sonar.

(B) While using low-frequency or hull-mounted mid-frequency active sonar sources associated with anti-submarine warfare and mine warfare activities at sea, vessels less than 65 ft (20 m) in length and the Littoral Combat Ship (and similar vessels which are minimally manned) will have one lookout at the forward position of the vessel due to space and manning restrictions.

(C) Ships conducting active sonar activities while moored or at anchor (including pierside testing or maintenance) will maintain one lookout.

(D) Ships or aircraft conducting non-hull-mounted mid-frequency active sonar, such as helicopter dipping sonar systems, will maintain one lookout.

(E) Surface ships or aircraft conducting high-frequency or non-hull-mounted mid-frequency active sonar activities associated with anti-submarine warfare and mine warfare activities at sea will have one lookout.

(iv) Lookout measures for explosives and impulsive sound:

(A) Aircraft conducting IEER sonobuoy activities and explosive sonobuoy exercises will have one lookout.

(B) Surface vessels conducting anti-swimmer grenade activities will have one lookout.

(C) During general mine countermeasure and neutralization activities using up to a 20-lb net explosive weight detonation (bin E6 and below), vessels greater than 200 ft (61 m) will have two lookouts, while vessels less than 200 ft (61 m) will have one lookout.

(D) Mine neutralization activities involving positive diver-placed charges using up to a 20-lb net explosive weight detonation will have two lookouts.

(E) When mine neutralization activities using diver-placed charges with up to a 20-lb net explosive weight detonation are conducted with a time-delay firing device, four lookouts will be used. Two lookouts will be positioned in each of two small rigid hull inflatable boats. When aircraft are used, the pilot or member of the aircrew will serve as an additional lookout. The divers placing the charges on mines will report all marine mammal sightings to their dive support vessel.

(F) Surface vessels or aircraft conducting gunnery exercises will have one lookout.

(G) Surface vessels or aircraft conducting missile exercises against surface targets will have one lookout.

(H) Aircraft conducting bombing exercises will have one lookout.

(I) During explosive torpedo testing, one lookout will be used and positioned in an aircraft.

(J) During sinking exercises, two lookouts will be used. One lookout will be positioned in an aircraft and one on a surface vessel.

(K) Surface vessels conducting explosive and non-explosive large-caliber gunnery exercises will have one lookout.

(v) Lookout measures for physical strike and disturbance:

(A) While underway, surface ships will have at least one lookout.

(B) During activities using towed in-water devices, one lookout will be used.

(C) Activities involving non-explosive practice munitions (e.g., small-, medium-, and large-caliber gunnery exercises) using a surface target will have one lookout.

(D) During activities involving non-explosive bombing exercises, one lookout will be used.

(2) *Mitigation Zones*—The following are protective measures concerning the implementation of mitigation zones.

(i) Mitigation zones will be measured as the radius from a source and represent a distance to be monitored.

(ii) Visual detections of marine mammals within a mitigation zone will be communicated immediately to a watch station for information dissemination and appropriate action.

(iii) Mitigation zones for non-impulsive sound: [1]

(A) When marine mammals are detected by any means, the Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1,000 yd (914 m) of the sonar dome (the bow).

(B) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are limited to at least 10 dB below the equipment's normal operating level if any detected marine mammals are within 500 yd (457 m) of the sonar dome.

(C) The Navy shall ensure that low-frequency and hull-mounted mid-frequency active sonar transmissions are ceased if any detected marine mammals are within 200 yd (183 m) of the sonar dome. Transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd beyond the location of the last detection.

(D) When marine mammals are detected by any means, the Navy shall ensure that high-frequency and non-hull-mounted mid-frequency active sonar transmission levels are ceased if any detected marine mammals are within 200 yd (183 m) of the source. Transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yd beyond the location of the last detection.

(E) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(F) Prior to start up or restart of active sonar, operators shall check that the mitigation zone radius around the sound source is clear of marine mammals.

(G) Generally, the Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(iv) Mitigation zones for explosive and impulsive sound:

(A) A mitigation zone with a radius of 600 yd (549 m) shall be established for IEER sonobuoys (bin E4).

(B) A mitigation zone with a radius of 350 yd (320 m) shall be established for explosive sonobuoys using 0.6 to 2.5 lb net explosive weight (bin E3).

(C) A mitigation zone with a radius of 200 yd (183 m) shall be established for anti-swimmer grenades (bin E2).

(D) A mitigation zone ranging from 350 yd (320 m) to 500 yd (457 m), dependent on charge size, shall be established for mine countermeasure and neutralization activities using positive control firing devices. Mitigation zone distances are specified for charge size in Table 9 of the preamble.

(E) A mitigation zone with a radius of 1,000 yd (915 m) shall be established for mine neutralization diver placed mines using time-delay firing devices (bin E6).

(F) A mitigation zone with a radius of 200 yd (183 m) shall be established for small- and medium-caliber gunnery exercises with a surface target (bin E2).

(G) A mitigation zone with a radius of 600 yd (549 m) shall be established for large-caliber gunnery exercises with a surface target (bin E5).

(H) A mitigation zone with a radius of 900 yd (823 m) shall be established for missile exercises with up to 250 lb net

[1] The mitigation zone will be 200 yd for low-frequency non-hull mounted sources in bin LF4.

explosive weight and a surface target (bin E9).

(I) A mitigation zone with a radius of 2,000 yd (1.8 km) shall be established for missile exercises with 251 to 500 lb net explosive weight and a surface target (E10).

(J) A mitigation zone with a radius of 2,500 yd (2.3 km) shall be established for bombing exercises (bin E12).

(K) A mitigation zone with a radius of 2,100 yd (1.9 km) shall be established for torpedo (explosive) testing (bin E11).

(L) A mitigation zone with a radius of 2.5 nautical miles shall be established for sinking exercises (bin E12).

(v) Mitigation zones for vessels and in-water devices:

(A) A mitigation zone of 500 yd (457 m) for observed whales and 200 yd (183 m) for all other marine mammals (except bow riding dolphins) shall be established for all vessel movement, providing it is safe to do so.

(B) A mitigation zone of 250 yd (229 m) shall be established for all towed in-water devices, providing it is safe to do so.

(vi) Mitigation zones for non-explosive practice munitions:

(A) A mitigation zone of 200 yd (183 m) shall be established for small, medium, and large caliber gunnery exercises using a surface target.

(B) A mitigation zone of 1,000 yd (914 m) shall be established for bombing exercises.

(3) Stranding Response Plan:

(i) The Navy shall abide by the letter of the ''Stranding Response Plan for Major Navy Training Exercises in the MITT Study Area,'' to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 218.71) occurs during a Major Training Exercise (MTE) in the MITT Study Area, the Navy shall implement the procedures described below.

(*1*) The Navy shall implement a shutdown (as defined § 218.71) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the MITT Study Area Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and the Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(*2*) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(*3*) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s), including carcass condition if the animal(s) is/are dead, location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NFMS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(*4*) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of mid-frequency active sonar training activities or explosive detonations, though farther than 14 nautical miles from the distressed animal(s), is likely contributing to the animals' refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

(*5*) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the MITT Study Area Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using mid-frequency active sonar, and marine mammal sightings information associated with training activities occurring within 80 nautical miles (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80-nautical miles (148-km), 72-hour period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(b) [Reserved]

**§ 218.95 Requirements for monitoring and reporting.**

(a) As outlined in the MITT Study Area Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.90 is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 218.91.

(b) The Holder of the LOA must conduct all monitoring and required reporting under the LOA, including abiding by the MITT Monitoring Plan.

(c) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security considerations allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, an Navy training or testing activity utilizing mid- or high-frequency active sonar, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(d) Annual MITT Monitoring Plan Report—(1) The Navy shall submit an annual report describing the implementation and results of the MITT Monitoring Plan, described in § 218.95. Data standards will be consistent to the extent appropriate across range complexes and study areas to allow for comparison in different geographic locations. Although additional information will be gathered, the protected species observers collecting marine mammal data pursuant to the MITT Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 218.95. (2) As an alternative, the Navy may submit a multi-range complex annual monitoring plan report to fulfill this requirement. Such a report would describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the ICMP. Similar study questions shall be treated together so that progress on each topic shall be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions. The report shall be submitted either 90 days after the calendar year, or 90 days after the conclusion of the monitoring year date to be determined by the Adaptive Management process.

(e) Annual MITT Exercise and Testing Reports—The Navy shall submit preliminary reports detailing the status of authorized sound sources within 21 days after the end of the annual authorization cycle. The Navy shall submit detailed reports 3 months after the anniversary of the date of issuance of the LOA. The detailed annual reports shall contain information on Major Training Exercises (MTE), Sinking Exercise (SINKEX) events, and a summary of sound sources used, as described below. The analysis in the detailed reports will be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed reports shall contain information identified in § 218.95(e)(1–5).

(1) Major Training Exercises/SINKEX:

(i) This section shall contain the reporting requirements for Coordinated and Strike Group exercises and SINKEX. Coordinated and Strike Group Major Training Exercises include:

(A) Sustainment Exercise (SUSTAINEX).

(B) Integrated ASW Course (IAC).

(C) Composite Training Unit Exercises (COMPTUEX).

(D) Joint Task Force Exercises (JTFEX).

(E) Undersea Warfare Exercise (USWEX).

(ii) Exercise information for each MTE:

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location (operating area).

(D) Number of items or hours (per the LOA) of each sound source bin (impulsive and non-impulsive) used in the exercise.

(E) Number and types of vessels, aircraft, etc., participating in exercise.

(F) Individual marine mammal sighting info for each sighting for each MTE:

(*1*) Date/time/location of sighting.

(*2*) Species (if not possible, indication of whale/dolphin).

(*3*) Number of individuals.

(*4*) Initial detection sensor.

(*5*) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or testing platform).

(*6*) Length of time observers maintained visual contact with marine mammal(s).

(*7*) Sea state.

(*8*) Visibility.

(*9*) Sound source in use at the time of sighting.

(*10*) Indication of whether animal is <200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or >2,000 yd from sound source.

(*11*) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was; or whether navigation was changed or delayed.

(*12*) If source in use is a hull-mounted sonar, relative bearing of animal from ship, and estimation of animal's motion relative to ship (opening, closing, parallel).

(*13*) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.) and if any calves present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(iv) Exercise information for each SINKEX:

(A) List of the vessels and aircraft involved in the SINKEX.

(B) Location (operating area).

(C) Chronological list of events with times, including time of sunrise and sunset, start and stop time of all marine species surveys that occur before, during, and after the SINKEX, and ordnance used.

(D) Visibility and/or weather conditions, wind speed, cloud cover, etc. throughout exercise if it changes.

(E) Aircraft used in the surveys, flight altitude, and flight speed and the area covered by each of the surveys, given in coordinates, map, or square miles.

(F) Passive acoustic monitoring details (number of sonobuoys, area and depth that was heard, detections of biologic activity, etc.).

(G) Individual marine mammal sighting info for each sighting that required mitigation to be implemented:

(*1*) Date/time/location of sighting.

(*2*) Species (if not possible, indication of whale/dolphin).

(*3*) Number of individuals.

(*4*) Initial detection sensor.

(*5*) Indication of specific type of platform the observation was made from (including, for example, what type of surface vessel or platform).

(*6*) Length of time observers maintained visual contact with marine mammal(s).

(*7*) Sea state.

(*8*) Visibility.

(*9*) Indication of whether animal is <200 yd, 200–500 yd, 500–1,000 yd, 1,000–2,000 yd, or >2,000 yd from the target.

(*10*) Mitigation implementation—Whether the SINKEX was stopped or delayed and length of delay.

(*11*) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.), and if any calves present.

(H) List of the ordnance used throughout the SINEKX and net explosive weight (NEW) of each weapon and the combined NEW.

(2) Summary of Sources Used.

(i) This section shall include the following information summarized from the authorized sound sources used in all training and testing events:

(A) Total annual or quantity (per the LOA) of each bin of sonar or other non-impulsive source;

(B) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive bin; and

(C) Improved Extended Echo-Ranging System (IEER)/sonobuoy summary, including:

(*1*) Total expended/detonated rounds (buoys).

(*2*) Total number of self-scuttled IEER rounds.

(3) Sonar Exercise Notification—The Navy shall submit to NMFS (specific contact information to be provided in the LOA) either an electronic (preferably) or verbal report within 15 calendar days after the completion of any major exercise indicating:

(i) Location of the exercise.

(ii) Beginning and end dates of the exercise.

(iii) Type of exercise.

(4) Geographic Information Presentation—The reports shall present an annual (and seasonal, where practical) depiction of training exercises and testing bin usage geographically across the Study Area.

(5) 5-year Close-out Exercise and Testing Report—This report will be included as part of the 2020 annual exercise or testing report. This report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the 5-year total for each sound source bin with a comparison to the 5-year allowance. Additionally, if there were any changes to the sound source allowance, this report will include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the FEIS and final rule determinations. The

report will be submitted 3 months after the expiration of the rule. NMFS will submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

**§ 218.96 Applications for Letters of Authorization.**

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.106 of this chapter) conducting the activity identified in § 218.90(c) (the U.S. Navy) must apply for and obtain either an initial LOA in accordance with § 218.97 or a renewal under § 218.98.

**§ 218.97 Letters of Authorization.**

(a) An LOA, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart.

(b) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the LOA will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

**§ 218.98 Renewals and Modifications of Letters of Authorization.**

(a) A Letter of Authorization issued under §§ 216.106 and 218.97 of this chapter for the activity identified in § 218.90(c) will be renewed or modified upon request of the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision of this chapter), and;

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 and § 218.97 of this chapter for the activity identified in § 218.94 of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, and reporting measures in an LOA:

(A) Results from Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.92(c), an LOA may be modified without prior notification and an opportunity for public comment. Notification would be published in the **Federal Register** within 30 days of the action.

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Part III

## Environmental Protection Agency

40 CFR Part 170

Pesticides; Agricultural Worker Protection Standard Revisions; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 170**

**[EPA–HQ–OPP–2011–0184; FRL–9395–8]**

**RIN 2070–AJ22**

## Pesticides; Agricultural Worker Protection Standard Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing updates and revisions to the existing worker protection regulation for pesticides. The proposed changes are in response to extensive stakeholder review of the regulation and its implementation since 1992, and reflect current research on how to mitigate occupational pesticide exposure to agricultural workers and pesticide handlers. EPA is proposing to strengthen the protections provided to agricultural workers and handlers under the worker protection standard by improving elements of the existing regulation, such as training, notification, communication materials, use of personal protective equipment, and decontamination supplies. EPA expects the revisions, once final, to prevent unreasonable adverse effects from exposure to pesticides among agricultural workers and pesticide handlers; vulnerable groups, such as minority and low-income populations, child farmworkers, and farmworker families; and the general public. EPA recognizes the importance and independence of family farms and is proposing to expand the immediate family exemption to the WPS.

**DATES:** Comments must be received on or before June 17, 2014.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0184, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Kathy Davis, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–7002; fax number: (703) 308–2962; email address: *davis.kathy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you work in or employ persons working in production agriculture where pesticides are applied.

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000), establishments or persons, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds.
- Nursery and Tree Production (NAICS code 111421), e.g., establishments or persons primarily engaged in (1) growing nursery products, nursery stock, shrubbery, bulbs, fruit stock, sod, and so forth, under cover or in open fields and/or (2) growing short rotation woody trees with a growth and harvest cycle of 10 years or less for pulp or tree stock.
- Timber Tract Operations (NAICS code 113110), e.g., establishments or persons primarily engaged in the operation of timber tracts for the purpose of selling standing timber. Forest Nurseries and Gathering of Forest Products (NAICS code 113210), e.g., establishments or persons primarily engaged in (1) growing trees for reforestation and/or (2) gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
- Farm Labor Contractors and Crew Leaders (NAICS code 115115), e.g., establishments or persons primarily engaged in supplying labor for agricultural production or harvesting.
- Farm Workers (NAICS codes 11511, 115112, and 115114), e.g., establishments or persons primarily engaged in providing support activities for growing crops; establishments or persons primarily engaged in performing a soil preparation activity or crop production service, such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services; and establishments or persons primarily engaged in performing services on crops, subsequent to their harvest, with the intent of preparing them for market or further processing.
- Pesticide Manufacturers (NAICS code 325320), e.g., establishments primarily engaged in the formulation and preparation of agricultural and household pest control chemicals (except fertilizers).
- Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319), e.g., establishments or persons primarily engaged in promoting causes associated with human rights either for a broad or specific constituency; establishments or persons primarily engaged in promoting the preservation and protection of the environment and wildlife; and establishments primarily engaged in social advocacy.
- Farm Worker Labor Organizations (NAICS code 813930), e.g., establishments or persons primarily engaged in promoting the interests of organized labor and union employees.
- Pesticide Handling in Forestry (NAICS code 115310), e.g., establishments or persons primarily providing support activities for forestry, such as forest pest control.
- Administration of Conservation Programs (NAICS code 924120), e.g., government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
- Pesticide Handling on Farms (NAICS code 115112), e.g.,

establishments or persons primarily engaged in performing a soil preparation activity or crop production service, such as seed bed preparation, planting, cultivating, and crop protecting services.

• Crop Advisors (NAICS codes 115112, 541690, 541712) e.g., establishments or persons who primarily provide advice and assistance to businesses and other organizations on scientific and technical issues related to pesticide use and pest pressure.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

*A. Executive Summary*

1. *Purpose of the regulatory action.* The Environmental Protection Agency (EPA or the Agency) proposes to revise the existing Worker Protection Standard (WPS) at 40 CFR part 170 to reduce the incidence of occupational pesticide exposure and related illness among agricultural workers (workers) and pesticide handlers (handlers) covered by the rule. This regulation, in combination with other components of EPA's pesticide regulatory program, is intended to prevent unreasonable adverse effects of pesticides among pesticide applicators, workers, handlers, the general public, and vulnerable groups, such as minority and low-income populations.

2. Summary of the major provisions. This proposal revises the existing WPS in several areas: Training, notification, hazard communication, minimum age, and personal protective equipment. The key changes are described below.

For training, the proposal requires employers to ensure that workers and handlers receive pesticide safety training every year. The content of the training is expanded to include how to reduce take-home exposure to pesticides, as well as other topics. Employers are required to retain records of the training provided to workers and handlers for 2 years from the date of training.

For notification, the proposal requires employers to post treated areas when the product used has a restricted-entry interval (REI) greater than 48 hours. It also requires that workers performing early-entry tasks, i.e., entering a treated area when an REI is in effect, receive information about the pesticide used in the area where they will work, the specific task(s) to be performed, and the amount of time the worker may remain in the treated area. Finally, the proposal requires employers to keep a record of the information provided to workers performing early-entry tasks.

For hazard communication, the proposal eliminates the requirement for a central display of pesticide application-specific information. The proposal requires the employer to maintain and make available upon request the pesticide application-specific information, as well as the labeling and safety data sheets for pesticides used on the establishment for 2 years.

For minimum age, the proposal requires that handlers and workers performing early-entry tasks be at least 16 years old. This minimum age does not apply to immediate family members working on an establishment owned by another immediate family member.

For personal protective equipment (PPE), the proposal adopts the Occupational Safety and Health Act requirements for respirator use by handlers, i.e., fit test, medical evaluation, and training. In addition, the proposal adopts the existing California standard for closed systems.

3. *Costs and impacts.* Under section 3(f)(4) of Executive Order 12866 (58 FR 51735; October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this proposed rulemaking to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821; January 21, 2011), and any changes made in response to OMB recommendations have been documented in the public docket for this action.

EPA has prepared an analysis of the potential costs and impacts associated with this rulemaking. This analysis is summarized in greater detail in Unit II.G. of this proposal. The following chart provides a brief outline of the costs and impacts of this proposal:

| *Category* | *Description* | *Source* |
|---|---|---|
| Monetized Benefits Avoided acute pesticide incidents. | $5–14 million/year after adjustment for underreporting of pesticide incidents | EA Chapter 6.5. |
| Qualitative Benefits | • Willingness to pay to avoid acute effects of pesticide exposure beyond cost of treatment and loss of productivity.<br>• Reduced latent effect of avoided acute pesticide exposure<br>• Reduced chronic effects from lower chronic pesticide exposure to workers, handlers, and farmworker families, including a range of illnesses such as Non-Hodgkins lymphoma, prostate cancer, Parkinson's disease, lung cancer, chronic bronchitis, and asthma. | EA Chapter 6. |

| *Category* | *Description* | *Source* |
|---|---|---|
| Monetized Costs | $62–73 million/year | EA Chapter 5.2. |
| Small Business Impacts | No significant impact on a substantial number of small entities<br>• The rulemaking will affect over 300,000 small farms, nurseries, and greenhouses and several hundred small commercial entities that are contracted to apply pesticides.<br>• Impact less than 0.1% of the annual value of sales or revenues for the average small entity. | EA Chapter 5.4. |
| Impact on Jobs | The rulemaking will have a negligible effect on jobs and employment<br>• The marginal cost of a typical farmworker is expected to increase $5/year<br>• The marginal cost for a more skilled pesticide handler is expected to increase by $60 per year, but this is less than 0.3 percent of the cost of a part-time employee. | EA Chapter 5.3. |

*B. What action is the Agency taking?*

The WPS is a regulation intended to reduce the risks of injury or illness resulting from agricultural workers' and handlers' use and contact with pesticides on farms, forests, nurseries and greenhouses. The rule does not cover persons working directly with livestock. The existing regulation has provisions for employers to provide workers and handlers with pesticide safety training, posting and notification of treated areas, entry restrictions, and PPE for workers who enter treated areas after pesticide application to perform crop-related tasks, as well as for handlers who mix, load, and apply pesticides. The rule was promulgated in 1992 and implementation was delayed until 1995.

The changes in this proposed revision of the WPS are intended to address shortcomings in the current regulations, such as:

• Absence of a minimum age for handlers of pesticides and agricultural workers engaged in early-entry activities,

• Inadequate hazard communication provisions,

• Insufficient training of agricultural workers before they face potential pesticide exposure,

• Unclear requirements regarding the decontamination supplies the WPS requires employers to provide, and

• Insufficient recordkeeping to verify compliance with regulations.

EPA believes that the proposed changes offer targeted improvements that would reduce risk through protective requirements and improve operational efficiencies. EPA expects the proposed changes to:

• Improve effectiveness of worker and handler training,

• Improve protections to workers during restricted-entry intervals (REIs),

• Improve protections for workers during and after pesticide applications,

• Expand the information provided to workers, thus improving hazard communication protections,

• Expand the content of pesticide safety information displayed, thus improving the display's effectiveness,

• Improve the protections for crop advisor employees,

• Increase the amounts of decontamination water available, thus improving the effectiveness of the decontamination process,

• Improve the emergency response when workers experience pesticide exposures,

• Improve the organization of the WPS, thus improving employers' ability to understand and comply with the provisions,

• Clarify the coverage of the WPS to those employed and receiving a salary or wage to ensure protection for occupational pesticide workers,

• Protect children by establishing a minimum age for handlers and for workers who enter a treated area during an REI while maintaining an exemption to the minimum age requirement for children working on the establishment of an immediately family member, and

• Improve flexibility for small farmers and members of their immediate family by expanding the definition of immediate family members to be more inclusive and retaining the exemptions from almost all WPS requirements for owners and their immediate family members.

*C. What is the Agency's authority for taking this action?*

This action is issued under the authority of sections 2 through 35 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, and particularly section 25(a), 7 U.S.C. 136w(a).

*D. Related Rulemaking*

EPA is also considering a proposed rule to amend 40 CFR part 171, titled ''Certification of Pesticide Applicators.'' Since parts 170 and 171, along with other components of the pesticide program, work together to reduce and prevent unreasonable adverse effects to pesticides, EPA may use any comments received on the proposed amendments to part 171 when formulating a final rule to amend the current WPS at part 170.

*E. Benefits of the Proposal*

The proposed changes to the current WPS requirements are expected to lead to an overall reduction in incidents of unsafe pesticide exposure and to improve the occupational health of the nation's agricultural workers and pesticide handlers. This section provides an overview of the qualitative benefits of the proposal and the estimated benefits that would accrue from avoiding acute pesticide exposure in the population protected by the WPS. It also provides an estimate of the number of chronic illnesses with a plausible association with pesticide exposure that would have to be prevented by the proposed changes in order for the total estimated benefits to meet the estimated cost of the proposal.

A sizeable portion of the agricultural workforce may be exposed occupationally to pesticides and pesticide residues. These exposures can pose significant long- and short-term health risks. It is difficult to quantify a specific level of risk and project the risk reduction that would result from this proposal because workers and handlers are potentially exposed to a wide range of pesticides with varying toxicities and risks. However, there is strong evidence that workers and handlers may be exposed to pesticides at levels that can cause adverse effects and that both the exposures and the risks can be substantially reduced. EPA believes the provisions in the proposed rule would reduce pesticide exposures and the associated risks.

The estimated quantified benefits from reducing acute worker and handler exposure to pesticides total about $11.4 million annually (Ref. 1). This conservative estimate includes only the avoided costs in medical care and lost productivity to workers and handlers and assumes that just 25% of acute

pesticide incidents are reported. It does not include quantification of the reduction in chronic effects of pesticide exposure to workers and handlers, reduced effects of exposure including developmental impacts, to children and pregnant workers and handlers or willingness to pay to avoid symptoms of pesticide exposure. Because the chronic effects of pesticide exposures are seldom attributable to a specific cause, and thus are unlikely to be recorded in pesticide poisoning databases, EPA is not able to quantify the benefits expected to accrue from proposed WPS changes that would reduce chronic exposure to pesticides. However, associations between pesticide exposure and certain cancer and non-cancer chronic health effects are well documented in the peer-reviewed literature, and reducing these chronic health effects is an important FIFRA goal.

Even if the lack of quantitative data impairs the reliability of estimates of the total number of chronic illnesses avoided, it is reasonable to expect that the proposed changes to the WPS will reduce the incidence of chronic disease resulting from pesticide exposure. Therefore, EPA conducted a ''break even'' analysis to consider the plausibility of the proposed changes to the WPS reducing the incidence of chronic disease enough to cause the net benefits of the proposed rule to exceed its anticipated costs. Under this analysis, EPA looked at the costs associated with non-Hodgkin's lymphoma, prostate cancer, Parkinson's disease, lung cancer, bronchitis, and asthma and their frequency among agricultural workers, and found that reducing the incidence of lung cancer by 0.08% and the incidence of the other chronic diseases by 0.8% per year (about 53 total cases per year among the population of workers and handlers protected under the WPS) would produce quantified benefits sufficient to bridge the gap between the quantified benefits from reducing acute incidents and the $62.1 million to $72.9 million cost of the proposed rule. Overall, the weight of evidence suggests that the proposed requirements would result in long-term health benefits to agricultural workers and pesticide handlers in excess of the less than 1% reduction in just six diseases that corresponds with the break-even point for the proposed rule, not only by reducing their daily risk of pesticide exposures, but also by improving quality of life throughout their lives, resulting in a lower cost of health care and a healthier society.

The proposed changes to the current WPS requirements, specifically improved training on reducing pesticide residues brought from the treated area to the home on workers and handlers' clothing and bodies and establishing a minimum age for handlers and early entry workers, other than those covered by the immediate family exemption, mitigate the potential for children to be exposed to pesticides directly and indirectly. The unquantified benefit to adolescent workers and handlers, as well as children of workers and handlers is great; reducing exposure to pesticides could translate into fewer sick days, fewer days missed of school, improved capacity to learn, and better long-term health. Parents and caregivers reap benefits by having healthier families, fewer missed workdays, and better quality of life.

By proposing several interrelated exposure-reduction measures, the revised rule is expected to mitigate approximately 56% of reported acute WPS-related pesticide incidents. EPA believes the proposed rule would substantially mitigate for these workers and handlers the potential for adverse health effects (acute and chronic) from occupational exposures to such pesticides and their residues. These measures include requirements intended to reduce exposure by:

• Ensuring that workers and handlers are informed about the hazards of pesticides—the proposed rule changes the content and frequency of required pesticide safety training, as well as proposing changes to ensure that the pesticide safety training is more effective.

• Reducing exposure to pesticides—among other things, the proposed rule changes and clarifies the requirements for personal protective equipment. It also makes changes to the timing of applications when people are nearby. These and other provisions should directly reduce exposure in the agricultural workforce.

• Mitigating the effects from exposures that occur—some accidental exposures are inevitable. EPA expects the proposed rule to mitigate the severity of health impacts by updating and clarifying what is required to respond to exposures.

Further detail on the benefits of this proposal is provided in the document titled ''Economic Analysis of Proposed Revisions to the Worker Protection Standard'' which is available in the docket for this rulemaking (Ref. 1). The following briefly highlights the anticipated benefits:

1. Reduce incidents of exposure and illness through:

*a. Expanded and more frequent training for workers and handlers.* EPA's current requirement for training workers and handlers fails to address or to highlight the importance of some self-protective practices, such as reducing pesticide exposure to workers, handlers, and their families by avoiding bringing pesticide residues home on clothing, shoes, or skin. The existing regulation requires employers to provide training every 5 years. The proposed rule, if finalized, would expand the content of the training, increase the frequency of training to every year, and set higher standards for trainers. Providing workers and handlers with information on reducing pesticide exposure in a manner they understand, e.g., in a language they speak and at an appropriate education level, and at intervals more likely to result in retention of the information, would benefit workers and handlers. Thus, EPA believes the proposed rule would reduce overall pesticide exposure among workers, handlers, and their families.

*b. Improved posting of pesticide-treated areas.* The current WPS allows growers to provide either an oral or posted warning to workers about which areas have been treated with a pesticide and are under an REI unless the pesticide label requires both an oral and posted warning. Many of the occupational pesticide illnesses reported to state health agencies have occurred when workers entered a treated area before the REI expired. The proposed regulation would require posting of all treated areas with an REI of greater than 48 hours, providing a visual reminder to workers not to enter the specific pesticide-treated area without proper protection.

*c. Additional information before entering a pesticide-treated area under an REI.* As mentioned above, many incidents of pesticide exposure among workers result from entering an area while an REI is in effect. The proposed rule would require that worker training include information about the limited circumstances in which workers may enter a treated area under an REI, the hazards workers may face, and that the employer must provide the proper PPE. Employers would also have to inform workers entering a treated area under an REI about the conditions under which they enter the treated area and the maximum time they are permitted to stay in the treated area. Providing workers with general information about working in a treated area under an REI as well as with specific information about the circumstances of each instance should make them aware of the elevated risks and the steps necessary to protect themselves.

*d. Access to more information about chemical hazards in the workplace.* The current WPS requires the employer to maintain records of what pesticides have been used or have had an REI in effect on the establishment in the last 30 days. The employer must provide the name of the pesticide, EPA registration number, and other general information at a central location on the establishment. The proposed rule would require employers to maintain a copy of pesticide labeling, the application records, and the Safety Data Sheet (SDS, formerly known as Material Safety Data Sheet, or MSDS), as well as the information currently required under the WPS, for 2 years after the product was applied on the establishment. The employer would be required to provide this information upon request and to ensure that health care providers treating a worker or handler who was exposed on the establishment receive a copy of this information. The more specific information required, longer retention period, and provision to provide additional information to health care providers should assist the health care provider in determining the specific types of pesticides to which a worker or handler may have been exposed and in more effectively treating the injured person.

*e. Strengthened requirements for handlers during applications.* The risk of illness resulting from exposure to pesticides through drift is largely borne by agricultural workers. A recent study estimates that 37% to 68% of acute pesticide-related illnesses in agricultural workers are caused by spray drift (Ref. 2). The proposed rule would require handlers to immediately stop an application if, during the application, anyone other than a properly equipped handler enters the entry-restricted area or the area treated with pesticides. This, together with the proposal to create entry-restricted areas around the treated area for farms, forests and nurseries, is expected to result in reduced incidents of worker exposure through unintentional contact during application or through drift.

2. Strengthen protection for children through:

*a. Implementing a minimum age of 16 for handlers and early-entry workers.* The current WPS does not have a minimum age for handlers or early-entry workers. These tasks involve contact with concentrated forms of pesticides, applying pesticides, or entering pesticide-treated areas before the REI has expired. Children may be more susceptible to the effects of pesticide exposure because their systems are developing, and research shows that adolescents have not fully developed informed decisionmaking skills. The Fair Labor Standards Act (FLSA) establishes a minimum age of 16 for youth engaged in occupations deemed hazardous by the Secretary of Labor (29 U.S.C. 213(c)(2)). This includes persons handling toxicity category I and II pesticides in agriculture 29 CFR 570.71(a)(9). The FLSA prohibits youth under the age of 16 engaged in nonagricultural employment from any work involving pesticides. Implementing a requirement for handlers and early-entry workers to be at least 16 years old would ensure that all persons handling pesticides, regardless of the toxicity level, are protected, thereby reducing their overall risk of pesticide exposure and illness. Persons under the age of 16 working on the establishment owned by an immediate family member would be exempt from the proposed minimum age requirements.

*b. Improving training for workers and handlers on reducing take-home pesticide exposure.* The current WPS training does not provide specific information on how workers and handlers can minimize the possibility for transferring pesticide residues from their clothing, bodies, and shoes to their homes, vehicles, and family members. Although studies documenting the effects of take-home pesticide exposure are not conclusive, EPA has a reasonable concern about the potential for unreasonable adverse effects caused by exposure to workers, handlers, and their families. The proposed modest addition to training would educate workers and handlers on how to protect themselves and their families from take-home pesticide exposure.

3. Reduce some burdens on growers by:

*a. Eliminating duplicative respirator requirements.* Agricultural worker and handler employers may also be subject to regulations issued by other federal agencies, such as the Occupational Safety and Health Administration (OSHA). The current WPS standard for proper use and maintenance of a respirator differs from the standard established by OSHA. The proposed rule harmonizes the requirements for agricultural employers that may be required to provide a respirator for their employees using pesticides under the WPS with those issued by OSHA for respirator use in agriculture beyond pesticide use in order to reduce the burden on employers to comply with two separate standards.

*b. Providing a national mechanism to verify worker and handler training.* Under the current WPS employers may be uncertain about what measures they must take to verify whether a worker or handler has already received the required pesticide safety training on another establishment. EPA administers a voluntary training verification system, but it is not used nation-wide or consistently. As a result, many employers provide pesticide safety training to all new employees. The proposed revisions include a provision for the employer to provide the worker or handler with a copy of the record of the training, including worker or handler name, employer, trainer name, and date of training. Workers and handlers can provide this record to their next employer as proof of valid training and for the new employer to maintain a copy in his or her records. EPA believes a reliable training verification system will reduce overall burden on agricultural and handler employers.

*c. Streamlining notification requirements between handler employers and agricultural establishment employers.* Under the current WPS, handler employers are required to notify the owner of the agricultural establishment about the start and end time of applications, as well as changes to the application start time and end time or application duration, before the application begins. The proposed changes would require handlers or their employers to provide changes to pesticide application plans to the agricultural employer within 2 hours of the end of the application rather than before the application. Changes to the estimated application end time of less than one hour would not require notification.

*d. Improving clarity of the regulation.* The Agency proposes to revise and reorganize the WPS to enhance the ability of employers to understand their responsibilities under the regulation, which could lead to increased compliance with the rule. The proposed rule, if finalized, would reorganize the rule into four sections: (1) General requirements, (2) responsibilities of agricultural employers, (3) responsibilities of handler employers, and (4) exceptions. Employers' greater understanding and compliance with the WPS would ensure that workers and handlers are provided with the information and equipment they need to protect themselves. In turn, this should contribute to reduced incidents of unreasonable adverse effects from pesticide exposure.

*F. Request for Comments*

The Agency invites the public to provide its views and suggestions for changes on all of the proposals in this

document. Specifically, the Agency requests the public to consider and provide input on the following when providing comments:

- The need for, value of, and any alternatives to the requirements described in this document.
- The studies and scientific articles used as the basis of this proposed rule.
- The clarity of the proposed revisions.
- The ability to effectively enforce the proposed regulation.
- The economic analysis of the proposed rule, including its underlying assumptions, economic data, high- and low-cost options and alternatives, and benefits.

Additionally, in other parts of this proposed rule, EPA is specifically requesting comments on certain issues. EPA welcomes comments on these topics of particular interest to the Agency.

Commenters are encouraged to present any data or information that should be considered by EPA during the development of the final rule. Describe any assumptions and provide any technical information and data used in preparing your comments. Explain evaluations or estimates in sufficient detail to allow for them to be reproduced for validation. Commenters are reminded that the submission of data derived from human research should include information concerning the ethical conduct of such research, in compliance with the requirements at 40 CFR 26.1303.

*G. Reasons for The Proposed Action*

The WPS is more than 20 years old and EPA believes it can be improved. Since the late 1990s, EPA has engaged a wide range of stakeholders to evaluate the effectiveness of the WPS and to determine if improvements are necessary. EPA met with groups including, but not limited to, farmworker organizations, health care providers, state regulators, pesticide manufacturers, farmers, organizations representing agricultural commodity producers, and crop advisors. Through public meetings and federal advisory committees, and as individuals and small groups, a broad spectrum of stakeholders provided recommendations to EPA. Many of the proposed changes address their recommendations and concerns.

EPA has also reviewed available information about occupational pesticide exposure in agriculture. The Agency's review of these reports indicates that many incidents might have been avoided if workers and handlers had better training, were better notified of treated areas, and used PPE properly when required. For example, workers became ill after entering a treated area before the REI expired or without wearing the proper equipment, and through drift from a nearby pesticide application. EPA believes these types of incidents could be significantly reduced by enhancing the training for workers and handlers and strengthening provisions of the regulation designed to keep workers and handlers out of pesticide-treated areas unless they have the proper information and PPE.

The great majority of agricultural workers and handlers are disadvantaged. The National Agricultural Worker Survey (NAWS) data indicate the median family income range was $12,500–$14,999, many do not speak English and are not literate in their native language, and workers face challenges accessing health care and housing (Ref. 3). Workers and handlers experience risks from occupational pesticide exposure that are greater than those faced by the general population because workers and handlers work with and around pesticides on a daily basis, and language and literacy barriers make effective hazard communication a challenge. EPA is paying special attention to the disproportionate burden or risk carried by this disadvantaged community. The proposed rule as a whole addresses many worker safety concerns; throughout this document the environmental justice concerns relative to specific changes will be highlighted.

In conjunction with various non-regulatory programs, the WPS requirements are intended, among other things, to reduce the risks of illness or injury to workers and handlers resulting from occupational exposure to pesticides on agricultural establishments. Broadly speaking, the WPS provisions are meant to (1) inform workers and handlers about the hazards and risks from pesticides they use or to which they come into contact in the workplace, (2) protect workers and handlers from occupational exposure to pesticides and the potential adverse effects of pesticides, and (3) mitigate the potential adverse effects of unavoidable pesticide exposure, including accidents. Within these categories, EPA evaluated the costs and benefits of alternative requirements and is proposing a set of requirements that, in combination, is expected to achieve substantial benefits at minimum cost.

The overall costs of the proposal range from $62.1 to $72.9 million annually. These costs would be borne almost entirely by agricultural establishments, those who employ workers and handlers and use pesticides. Although the cost per establishment will vary by the number and type of employees, EPA estimates that the annual cost to large establishments would be $340 to $400 per year. Small establishments would incur a lower cost of $130 to $150 per year, which amounts to less than 0.1 percent of their annual revenue. Presented differently, the additional cost of employing a worker is estimated at less than $5 per year and the additional cost of employing a handler is estimated at about $60 per year. EPA does not believe the cost of the regulation will have a negative impact on employment.

The proposal, if finalized, would reduce the disproportionate risks associated with occupational pesticide exposure that currently fall on workers, handlers, and their families. Agricultural and handler employers are the group responsible for, and that benefit from, pesticide application on their establishments. Therefore, EPA believes it is appropriate for these employers to bear the cost of the protections for their employees, rather than to impose the costs on workers and handlers themselves. Through the WPS and these proposals, EPA seeks to have those responsible for making pesticide use decisions and applying pesticides internalize the effects of their decisions. This would minimize the externalities, i.e., undesirable or unintended consequences of decisions that result in negative consequences for other parties, to workers and handlers.

The benefits of the proposed rule primarily accrue to workers, handlers and, indirectly, to their families. EPA estimates the quantitative value of avoided acute incidents as a result of the proposed rule to be between $1.2 million to $2.8 million annually (Ref. 1). However, EPA recognizes that this estimate is biased downward by an unknown degree. First, pesticide incidents, like many illnesses and accidents, are underreported because sufferers may not seek medical care, cases may not be correctly diagnosed, and correctly diagnosed cases may not be filed with the central reporting database. Also, many symptoms of pesticide poisoning, such as a fatigue, nausea, rash, dizziness, and diarrhea, may be confused with other illnesses and may not be reported by the workers as related to their occupational exposure. Studies estimate that underreporting of pesticide exposure by workers and handlers ranges from 20 to 90 percent. Adjusting the estimate based on a reasonable assumption that only 25% of acute incidents are reported

brings the estimated benefits from reducing acute pesticide incidents to $11.4 million annually (Ref. 1).

Second, EPA's approach to estimating the quantitative benefits of the proposal only measures avoided medical costs and lost wages, not the willingness to pay to avoid possible symptoms due to pesticide exposure, which could be substantially higher. It also does not take into account the disenfranchised nature of this population and the relative impact that lost work time would have on their incomes and family health. An increase in protections across the entire worker population would be more beneficial and likely to effect positive change than requiring individuals to value and pay for their own increase in safety. Workers and handlers may not be able to pay for the improvements to their own safety, necessitating intervention by the government to ensure these populations are adequately protected.

Well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects exist in peer-reviewed literature; however, the wide range of employment histories and pesticide exposures characteristic of the agricultural workforce generally prevents reliable estimates of the full impact of chronic pesticide exposure. In order to account for the reduction in chronic diseases expected as a result of the proposed WPS changes, OPP used a ''break-even'' analysis. Based on a literature review, EPA evaluated the costs associated with six chronic illnesses that have well-documented association with agricultural pesticide exposure: non-Hodgkin's lymphoma, prostate cancer, Parkinson's disease, lung cancer, bronchitis, and asthma. Owing to the high costs associated with these chronic illnesses, improvements to the WPS that could reduce the frequency of these illnesses among workers and handlers by less than 1% (53 total cases per year) would result in sufficient benefits to bridge the gap between the estimated costs of the revisions and the anticipated benefits associated with reducing acute pesticide exposures. For the reasons identified below, it is reasonable to expect that the proposed changes to the WPS will reduce chronic pesticide exposures enough to reduce the frequency of chronic illnesses by at least 0.08% for lung cancer and at least 0.8% for the other illnesses considered.

EPA believes the qualitative benefits of the proposed rule are substantial. The proposals for more frequent, expanded training, better identification of treated areas, strengthened requirements for PPE, and clarifying the responses and information required in the event of an emergency exposure all provide workers and handlers with more information and a better ability to protect themselves from risks associated with pesticide exposure. The proposals complement each other and the resulting benefits are derived from implementation of the whole package. Overall, the weight of evidence suggests that the proposed requirements will result in both short- and long-term health benefits to agricultural workers and pesticide handlers.

In addition, many of the proposed changes to current WPS requirements would specifically mitigate risks to children. The proposal would implement a minimum age of 16 for most handlers and early-entry workers; the minimum age would not apply to handlers and early-entry workers on an establishment owned by an immediate family member. EPA believes that these two tasks present a higher risk of exposure than do the general tasks assigned to a worker. Since children's bodies are still developing, they may be more susceptible to these elevated risks and therefore would benefit from strengthened protections. In addition, the proposal seeks through additional training to reduce the potential for workers to transport pesticide residues home to their families. Although studies are inconclusive about the effects of pesticides transferred from the treated area to the home, EPA believes that providing additional general information to workers and handlers about steps that may mitigate any potential risk would be prudent. Thus, the proposed changes are expected to reduce children's exposure to pesticides.

In the almost two decades since the 1992 WPS was implemented, EPA has learned from the Pesticide Program Dialogue Committee, National Assessment of the Pesticide Worker Safety Program process, meetings with state regulators, and other stakeholder interaction, that the 1992 rule needs improvements. EPA believes that the data available to the Agency supports this conclusion. The proposed rule reflects the Agency's commitment to pay particular attention to the health of children and environmental justice concerns. The proposal also aligns with the President's January 18, 2011 Executive Order 13563 (76 FR 3821), requesting that agencies review existing regulations to improve the efficacy of their protection, to balance costs and benefits, and to maximize their efficiency.

In proposing this revision, the Agency is mindful of the effects on small business, family farms, and other affected parties. The Agency has attempted to keep the costs to the regulated community as low as practicable, so that they are reasonably balanced against the anticipated risk reduction benefits of the measures proposed below.

### *H. Summary of Proposed Changes*

EPA proposes to revise the WPS by:

- Amending the existing pesticide safety training content, retraining interval (frequency), and qualifications of trainers,
- Ensuring workers receive safety information before entering any pesticide treated area by amending the existing ''grace period'' and expanding the training required during the ''grace period,''
- Establishing a minimum age of 16 for handlers and for workers who enter an area under an REI,
- Establishing requirements for specific training and notification for workers who enter an area under an REI,
- Restricting persons' entry into areas adjacent to a treated area during an application,
- Enhancing the requirement for employers to post warning signs around treated areas,
- Modifying the content of the warning sign,
- Adding information employers must keep under the requirement to maintain application-specific information,
- Requiring recordkeeping for pesticide safety training and worker entry into areas under an REI,
- Ensuring the immediate family exemption includes an exemption from the proposed minimum age requirements for handlers and early-entry workers,
- Expanding the definition of ''immediate family'' to allow more family-owned operations to qualify for the exemptions to the WPS requirements,
- Revising definitions to improve clarity and to refine terms, and
- Restructuring the regulation to make it easier to read and understand.

## III. Statutory Authority and Framework

This unit discusses the legal framework within which EPA regulates the safety of those who work with and around pesticides in agriculture.

### *A. FIFRA*

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) of 1947 established a framework for the regulation of pesticide products. Major amendments in 1972 by the Federal

Environmental Pesticide Control Act (7 U.S.C. 136 *et. seq.*) broadened federal pesticide regulatory authority to make it ''unlawful for any person to use any registered product in a manner inconsistent with its labeling'' (7 U.S.C. 136i (a)(2)(G)). The 1972 amendments provided civil and criminal penalties for violations of the Act (7 U.S.C. 136l) and authorized the Administrator to provide regulations to carry out the Act (7 U.S.C. 136w (a)). The new and revised provisions directed EPA to protect humans and the environment from unreasonable adverse effects of pesticides.

The legislative history of the 1972 amendments to FIFRA reflects the clear intent of Congress that farmers and agricultural workers were among those intended to be afforded protection under FIFRA. In discussing the 1972 amendments, the Senate Committee on Agriculture noted its intent of FIFRA to protect farmworkers and others from contacting pesticides or their residues. (Ref. 4)

EPA has implemented many protections for workers through use instructions on pesticide labeling, which have been legally binding on pesticide users since the 1972 amendments. See FIFRA section 12(a)(2)(G), which makes it unlawful ''to use any registered pesticide in a manner inconsistent with its labeling''. In order to expand these protective measures without making individual product labeling inordinately complex, the Agency decided to consolidate common requirements in a single, uniform standard that could be incorporated into agricultural pesticide labels by reference, the Worker Protection Standard (WPS). In 1992, the Agency issued the WPS, which, where mandated on a pesticide label, provides a uniform system of protections to workers and handlers on farms, forests, nurseries, and greenhouses from occupational exposure to the pesticide product. The WPS establishes uniform requirements for practices that minimize exposure, regardless of the risks of specific pesticides, and the individual pesticide product labeling provides the specific requirements appropriate to each pesticide product. The WPS sets basic requirements for notification of a treated area, limited entry into a treated area, supplies related to decontamination and maintenance of PPE, and access to information about pesticides used on the agricultural establishment. It also requires that workers and handlers receive basic safety training to inform them about ways to minimize their exposure and risk.

*B. EPA Regulation of Pesticides*

In order to protect human health and the environment from unreasonable adverse effects that might be caused by pesticides, the Agency has developed and implemented a rigorous process for registering and re-evaluating pesticides. The registration process begins when a manufacturer submits an application to register a pesticide. The application must contain required test data, including information on the pesticide's chemistry, environmental fate, toxicity to humans and wildlife, and potential for human exposure. The Agency also requires a copy of the proposed labeling, including directions for use, and appropriate warnings.

Once an application for registration of a new pesticide product is received, EPA conducts an evaluation, which includes a detailed review of scientific data to determine the potential impact on human health and the environment. The Agency considers the risk assessments and results of any peer review and evaluates potential risk management measures that could mitigate risks above the Agency's level of concern. Risk management measures could include, among other things, extending the restricted-entry interval (REI), the period during which people are prohibited from entering the treated area, to allow the pesticide residues to reach an acceptable level before worker reentry is permitted. They could also require certain engineering controls, such as use of closed mixing systems to reduce potential exposure to those who mix and load pesticides, or specific PPE, such as respirators, to protect users against risks associated with inhalation of the product.

In the decision-making process, EPA evaluates the application to determine whether the proposed use(s) meets the Agency's standards for registration. FIFRA is a risk-benefit statute. In evaluating the impact of a pesticide on occupational health and safety, EPA weighs the risks associated with use of the pesticide (occupational, environmental) and the benefits associated with use of the pesticide (economic, public health, environmental). FIFRA does not require EPA to balance the risks and benefits for each audience. For example, a product may pose risks to workers, but risks may nevertheless be reasonable in comparison to the economic benefit of continued use of the product to society at large.

If the application does not contain enough evidence to prove that the pesticide meets all of these standards, EPA communicates to the applicant the need for more or better refined data, labeling modifications, or additional use restrictions. Once the applicant has demonstrated that a proposed product meets the statutory standards, and, if the pesticide is intended to be used on food, a tolerance or exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act can be established, EPA will approve the registration, subject to any risk mitigation measures necessary to achieve that approval. EPA devotes significant resources to the regulation of pesticides to ensure that each pesticide product meets the FIFRA requirement that pesticides not cause unreasonable adverse effects to the public and the environment.

When EPA approves a pesticide, the label reflects the risk mitigation measures required by the Agency. Since users must comply with the directions for use and use restrictions on a product's labeling, EPA uses the labeling to establish and convey mandatory requirements for how the pesticide must be used to protect people and the environment from pesticide exposure. As discussed in Unit III.A., above, the labeling for agricultural pesticides requires compliance with the WPS, in order that workers, handlers, and their employers have a single, uniform set of specific requirements for the protection of workers and handlers that complement the product-specific labeling requirements.

*C. EPA's Pesticide Reregistration and Registration Review Programs*

FIFRA requires EPA to review periodically the registration of pesticides currently registered in the U.S. The 1988 FIFRA amendments required EPA to establish a pesticide reregistration program. Reregistration was a one-time comprehensive review of the human health and environmental effects of pesticides first registered before November 1, 1984 to make decisions about these pesticides' future use. The Food Quality Protection Act of 1996 required that EPA establish, through rule making, an ongoing ''registration review'' process of all pesticides at least every 15 years. The final rule establishing the registration review program was signed and published in August 2006. The purpose of both re-evaluation programs is to review all pesticides registered in the U.S. to ensure that they continue to meet current safety standards based on up-to-date scientific approaches and data.

Pesticides reviewed under the reregistration program that met current scientific and safety standards were

declared ''eligible'' for reregistration. The results of EPA's reviews are summarized in Reregistration Eligibility Decision (RED) documents. The last RED was completed in 2008. Often before a pesticide could be determined ''eligible,'' certain risk reduction measures had to be put in place. For a number of pesticides, measures intended to reduce exposure to handlers and workers were needed and are reflected on pesticide labeling. To address occupational risk concerns, REDs include mitigation measures such as voluntary cancellation; limiting the amount, frequency or timing of applications; other application restrictions; classification of a product or specific use as a ''Restricted Use Pesticide'' (RUP); PPE; specific REIs; user safety requirements; and improved use directions.

Rigorous education and enforcement are needed to ensure that these mitigation measures are appropriately implemented in the field. The framework provided by the WPS is critical for ensuring that the improvements brought about by reregistration, including worker risk mitigation measures, are realized. The rule changes being proposed in this notice are designed to enhance the effectiveness of the existing structure.

In summary, EPA's pesticide reregistration and registration reviews assess the specific risks associated with particular chemicals and ensure that the public and environment do not suffer unreasonable adverse effects from the risks. EPA implements the risk reduction and mitigation measures that result from the pesticide reregistration and registration review programs through individual pesticide product labeling.

*D. Existing Worker Protection Standard*

The WPS currently covers pesticide use at establishments engaged in the production of agricultural commodities: Farms, forests, nurseries, and greenhouses. The WPS does not cover persons working directly with livestock. WPS regulations are directed toward the working conditions of two types of employees: Workers and handlers.

- Workers perform tasks related to the cultivation and harvesting of agricultural products on agricultural establishments. Typical tasks include thinning, pruning, and harvesting commodities.
- Handlers mix, load, and apply pesticides, and do other activities linked to pesticide application on agricultural establishments.

The WPS defines general protections that cover all workers or handlers employed on an establishment that uses a pesticide that references the WPS on the label and complements the specific risk mitigation measures implemented through individual pesticide product labeling. The existing WPS requires agricultural employers to provide certain protections to their employees. Agricultural employers are required to notify workers of areas treated with pesticides so workers may avoid inadvertent exposures. Employers also must provide to all workers that may enter a treated area pesticide safety training that covers common routes of exposure, how to protect oneself from pesticide exposure, information on decontamination, and what to do in an emergency. Handlers receive more detailed training on using PPE, conducting pesticide application, and following safety principles. A central location on the establishment must have a pesticide safety poster and information on recent pesticide applications. Handlers and workers must be informed of specific requirements on the pesticide label related to the WPS.

The labeling of agricultural pesticides generally specifies REIs (a time during which entry into a treated area is strictly limited) for areas treated with pesticides. The existing WPS regulation provides detailed requirements regarding identifying areas under an REI and notifying workers about them, excluding workers and others from the treated areas, and the limited circumstances under which early entry may occur. The WPS provides detailed information concerning the types of PPE necessary for handlers and early-entry workers, if not specified on the label, and instruction that employers must provide to workers entering under an REI exception. The existing WPS also prohibits applicators from applying a pesticide in a way that will expose workers or other persons and excludes workers from areas while pesticides are being applied. These general requirements serve as a counterpart to the product-specific risk reduction measures implemented through the pesticide label.

The WPS also mitigates the risks associated with pesticide exposure by requiring agricultural employers to provide workers and handlers with water, soap, and towels for routine washing after working in or around areas where pesticides have been applied. There are also provisions for decontamination in the event of an emergency. The employer must provide transportation to a medical care facility for a worker or handler who may have been poisoned or injured, and provide information to the worker, handler, or medical personnel about the pesticide to which the person may have exposed.

A detailed history of the development of the 1992 WPS and the process leading to the proposed rule appears in Unit V.

## IV. Overview of EPA's Protection of Pesticide Workers

*A. Demographics of Agricultural Workers and Handlers*

The task of protecting workers and handlers from occupational exposure to pesticides presents a challenge, given the complexity of the science issues involving pesticide use, variability of pesticide use patterns, and the diversity of the labor population being served and the tasks they perform.

According to information published by the Department of Labor's (DOL) NAWS in 2001–2002, 75% of agricultural workers in the United States were born in Mexico and 2% in Central America (Ref. 3 p. 3). A majority (81%) of this group speaks Spanish as a native language, but a growing percentage speaks languages such as Creole, Mixteco, and indigenous languages (Ref. 3 p. 17). Approximately 44% could not speak English at all, and 53% could not read any English (Ref. 3 p. 21). Many have received minimal formal education; the foreign born workers, on average, completed no more than a sixth grade education (Ref. 3 p. 18).

Approximately 43% of the survey respondents were classified as migrant, having traveled at least 75 miles in the previous year to find a job in agriculture (Ref. 3 p. 7). Over 20% of respondents lived in housing provided by their employer and 58% rented housing from someone other than their employer (Ref. 3 p. 43). In general, agricultural workers surveyed by NAWS do not use health care facilities. Estimates of agricultural workers lacking health insurance range from 77% to 85% and estimates from the late 1990s indicate only 20% of those surveyed had visited a health care facility in the preceding 2 years (Ref. 5 pp. 12–13). U.S. Department of Agriculture (USDA) research, based on NAWS data, also reports that workers have difficulty entering the health care system to receive treatment. Cost was a significant barrier for two-thirds of farmworkers, while about a third listed language barriers as an impediment to receiving care. The problem is more severe among undocumented workers because they fear seeking treatment will lead to deportation or other adverse legal action (Ref. 6).

USDA issued a report indicating that the factors mentioned above contribute

to the disadvantaged status of hired workers in agriculture (Ref. 6). Unemployment rates, counting both crop and livestock workers (livestock workers are outside the scope of the WPS), are twice that of all salary and wage workers. The NAWS found crop workers' average annual income was between $10,000 and $12,499, with total family income averaging between $15,000 and $17,499 (Ref. 3 p. 47).

*B. Incident Data Sources and General Information*

Incident monitoring programs have provided the Agency with a better understanding of common types of pesticide exposures and their outcomes. In 2007, EPA released a report detailing the coverage of all pesticide exposure incident reporting databases considered by the Agency (Ref. 7). EPA consults two major databases for information on occupational pesticide exposure incidents.

The first database, the Sentinel Event Notification System for Occupational Risk (SENSOR), is maintained by the Centers for Disease Control and Prevention (CDC)/National Institute for Occupational Safety and Health (NIOSH). SENSOR covers all occupational injuries and has a specific component for pesticides (SENSOR-Pesticides). EPA uses SENSOR-Pesticides to monitor trends in occupational health related to acute exposures to pesticides, to identify emerging pesticide problems, and to build and maintain state surveillance capacity. SENSOR-Pesticides is a state-based surveillance system with eleven state participants. The program collects most poisoning incident cases from:

- Department of Labor workers' compensation claims when reported by physicians,
- State Departments of Agriculture, and
- Poison control centers.

A state SENSOR-Pesticides contact specialist follows up with workers and obtains medical records to verify symptoms, circumstances surrounding the exposure, severity, and outcome. Using a standardized protocol and case definitions derived from poison center reporting, SENSOR-Pesticides coordinators enter the incident interview description provided by the worker, medical report, and physician into the SENSOR data system. EPA believes that SENSOR-Pesticides provides the most comprehensive information on occupational pesticide exposure, but coverage is not nationwide and a majority of the data comes from California and Washington State.

The American Association of Poison Control Centers maintains the National Poison Data System (NPDS), formerly the Toxic Effects Surveillance System (TESS). NPDS is a computerized information system with geographically specific and near real-time reporting. While the main mission of Poison Control Centers (PCC) is helping callers respond to emergencies, not collecting specific information about incidents, NPDS data help identify emerging problems in chemical product safety. Hotlines at 61 PCCs nationwide are open 24 hours every day of the year. There are many bilingual PCCs in predominantly Spanish speaking areas. Hotlines are staffed by toxicology specialists to provide poisoning information and clinical care recommendations to callers with a focus on triage to give patients appropriate care. Using computer assisted data entry, standardized protocols, and strict data entry criteria, local callers report incidents that are retained locally and updated in summary form to the national database. Since 2000, nearly all calls in the system are submitted in a computer-assisted interview format by the 61 certified PCCs, adhering to clinical criteria designed to provide a consistent approach to evaluating and managing pesticide and drug related adverse incidents. Information calls are tallied separately and not counted as incidents. The NPDS system covers nearly the entire United States and its territories, but the system is clinically oriented and not designed to collect detailed occupational incident data.

Three studies showing undercounting of poison control data indicate the magnitude of the problem. The studies each focus on a specific region and compare cases reported to poison control with those poisonings for which there are hospital records. In all three cases, the studies indicate a substantial underreporting of poisoning incidents to poison control, especially related to pesticides (Ref. 8) (Ref. 9) (Ref. 10). Underreporting of pesticide incidents is a challenge for all available data sources for a number of reasons, as discussed below.

Symptoms of acute pesticide poisoning are often vague and mimic other causes, leading to incorrect diagnoses, and chronic effects are difficult to identify and track. The demographics of the worker population also contribute to underreporting of incidents. Many incident reports lack useful information, such as the exact product that was the source of the exposure, the amount of pesticide involved, or the circumstances of the exposure. There may not be enough information to determine if the adverse effects noted were in fact the result of pesticide exposure and not another contributing factor. A more complete discussion of the underreporting and its effect on pesticide incident reporting is located in the Economic Analysis for this proposal (Ref. 1).

The data available do provide a snapshot of the illnesses faced by workers and handlers in the field and the likely avenues of exposure. Review of these data sources shows that workers and handlers continue to face avoidable occupational pesticide exposure. The most common types of incidents are related to pesticide drift and unpermitted entry into an area under an REI (Ref. 11). Often handler exposure occurs when handlers are using PPE and do not wear the PPE properly or the PPE malfunctions. Generally, reports on the data note that many of the incidents could be prevented with strengthened training for handlers and workers and improved notification when an application is occurring or a treated area is under an REI (Ref. 11).

*C. Other Worker Protection Programs*

EPA's Pesticide Worker Safety Program is comprised of three major components: protections for agricultural labor through the WPS (40 CFR part 170), described in Unit III.D.; certification of RUP applicators; and the National Strategies for Health Care Providers: Pesticides Initiative (Health Care Providers Initiative). EPA uses its field programs and cooperative agreements to distribute information on the risks associated with pesticides, developing technology, and self-protection to avoid pesticide exposure. All three field programs solicit feedback from the regulated and affected communities to EPA about the effect of the pesticide labeling and mitigation measures. To implement these programs, the Office of Pesticide Programs works with an extensive network of partners, including state and tribal pesticide regulatory agencies; USDA's National Institute of Food and Agriculture (NIFA) (formerly the Cooperative State Research, Education, and Extension Service (CSREES)); university cooperative extension services; farmworker groups; and the regulated community. EPA funds collaborative field projects and activities through grants with governmental and non-governmental organizations with the goal of improving the health of workers, handlers, applicators, the public, and the environment.

Under the Certification of Pesticide Applicators rule, 40 CFR 171, EPA establishes standards for the

competency of applicators who use RUPs. The rule requires applicators to demonstrate competency to become certified to apply RUPs. Part 171 also has a section outlining the requirements for states, federal agencies, and tribes to administer a program to certify applicators in their jurisdictions. All states and several tribes, territories, and federal agencies administer their own applicator certification programs. EPA provides funding through an interagency agreement with USDA to support the training of applicators using RUPs through the cooperative extension services in each state.

The third prong of the Pesticide Worker Safety Program is the Health Care Providers Initiative, aimed at improving the training of health care providers in the recognition, diagnosis, and treatment of occupational pesticide poisonings. EPA collaborated in the development of a manual for health care providers called ''Recognition and Management of Pesticide Poisonings'' (Ref. 12). This resource outlines the health effects associated with different classes of pesticides and suggests treatments based on the suspected exposure.

Under this initiative, EPA also works closely with the Migrant Clinicians Network, an organization of health care providers serving the migrant community, on a project to improve pesticide education and awareness and to train health care providers to recognize and treat pesticide-related conditions. This project also includes the development of relevant resources and tools that health care providers can use to deal effectively with pesticide-related health conditions, and the distribution of these products through training sessions, the Internet, and continuing education opportunities.

*D. EPA–OSHA Relationship*

The Occupational Safety and Health Act, 29 U.S.C. 651 et. seq., grants the Occupational Safety and Health Administration (OSHA) authority to promulgate regulations to mitigate significant risks that may occur in the occupational setting. Under its statutory authority, OSHA promulgated a Hazard Communication Standard (HCS) (29 CFR 1910.1200) to protect employees from general chemical hazards in the workplace. OSHA also establishes industry, chemical, and process-specific standards to address workplace hazards that warrant additional regulatory measures to ensure employees' occupational safety and health.

Except as limited by section 4(b)(1) of the Occupational Safety and Health Act, which prohibits OSHA from regulating working conditions or hazards where other federal agencies exercise statutory authority to prescribe or to enforce standards for occupational safety and health, OSHA's HCS covers all industries in which an employee may be exposed to a chemical hazard in the workplace. OSHA based the HCS on employees' right to know about chemical hazards in the workplace in order to make informed decisions about their work practices, to better protect themselves, and to reduce their chances of illness or injury from a workplace accident. OSHA determined that employees are at a significant risk of experiencing adverse health effects in the absence of knowledge of workplace hazards. Among other things, the HCS requires employers to provide the following protections in the workplace:

- Develop, implement, and maintain a written hazard communication program;
- Maintain a written list of all hazardous chemical products and substances known to be present;
- Ensure labeling of all chemical containers;
- Provide employees with effective information and training on chemical hazards; and
- Maintain a copy of the safety data sheet (SDS, formerly known as Material Safety Data sheet, or MSDS) containing the chemical and physical hazard information for each hazardous chemical, and ensure that SDSs are readily accessible to employees when they are at the workplace.

To address the statutory limitation in section 4(b)(1) and to ensure workplace protections of agricultural workers and handlers, OSHA and EPA formed a working group to discuss the jurisdictional overlap between OSHA's authority over workplace safety and health and EPA's mandate to protect those who work with and around pesticides from the risks associated with exposure. OSHA and EPA sought to coordinate regulations related to workplace safety and health and to ensure that they were within the scope of each agency's statutes. EPA and OSHA agreed that OSHA's Field Sanitation Standard addresses general sanitary standards, while EPA's WPS decontamination requirements are specific to pesticide hazards. EPA stated that the intended reach of the WPS was limited to occupational safety for pesticides and that OSHA was not preempted from regulating any non-pesticide chemical or other workplace hazards in agriculture. OSHA established a policy not to cite employers covered under the WPS for pesticide-related HCS standards. The policy also defers to EPA's regulatory authorities for pesticide labeling and use, certification of pesticide applicators, and protection of handlers and workers on establishments covered by the WPS (Ref. 13).

## V. Sources of Information for Improvement of Worker Protection

*A. History of the WPS Regulation*

In 1974, EPA promulgated the first version of the WPS (39 FR 16888; May 10, 1974). The regulation provided health protections for workers exposed to pesticides from hand labor activities during and after applications. The 1974 regulations contained four basic elements:

- A prohibition against spraying workers,
- Specific reentry intervals for 12 pesticides and a general reentry interval for all other agricultural pesticides, prohibiting entry until sprays had dried or dusts had settled;
- A requirement for protective clothing for any worker who had to reenter treated areas before the specific reentry interval had expired; and
- A requirement for ''appropriate and timely'' warnings.

A 1983 review of the WPS concluded that the 1974 regulation did not adequately protect workers (49 FR 32605; August 15, 1984). New information was becoming available about the use of pesticides and the impact on occupational safety and health. OSHA had promulgated occupational health standards for workers in non-agricultural industries that provided greater protections than those contained in the WPS. The OSHA Standards included requirements for notifying workers of workplace chemicals to which they are exposed, personal protective equipment to mitigate risks of exposure, hygiene facilities, medical surveillance, worker training programs, and recordkeeping. EPA considered the addition of similar protections to the WPS.

In addition to the shortcomings of the protections in the 1974 rule, there were legal issues with respect to the enforcement of the protections. EPA realized that the four existing requirements of the WPS were not typically included on the pesticide labeling. Without a reference to the regulation on the labeling, the requirements were not legally enforceable. Moreover, the regulation itself did not clearly assign responsibility for compliance with the requirements; for example, workers were prohibited from entering treated areas, but nobody was charged with

communicating the prohibition to the workers or ensuring that they did not enter.

The Agency also wanted to expand the scope of the regulation to cover sites that had been exempted but were similar to farms, i.e., forests, nurseries, and greenhouses, and to add another group of people facing occupational pesticide exposure in agriculture—handlers who mix, load, or apply pesticides. Handlers' occupational exposure profile is distinct from that of workers protected by the initial WPS. When mixing, handlers may face exposure while pouring the concentrated pesticide or stirring the diluted mix. Loaders and applicators handle many gallons of the diluted pesticide and may experience exposure while transferring the pesticide mixture into the application equipment or making the application. The Agency believed that expanding the WPS to include the additional sites and adding specific protections for handlers was necessary.

In 1984, the Agency published an Advance Notice of Proposed Rulemaking (49 FR 32605; August 15, 1984), announcing its intention to revise the 1974 rule for the reasons outlined above and soliciting public comment. EPA also initiated a process of regulatory negotiation with parties interested in or affected by the WPS. Stakeholders with competing interests worked to resolve issues through collaboration and compromise. EPA convened a Federal Advisory Committee Act (FACA) workgroup, ''The Advisory Committee on WPS for Agricultural Pesticides,'' that had members representing a spectrum of stakeholder perspectives from 25 entities. Certain labor representatives discontinued their participation early in the process. As a result, the full committee did not participate in decision making; therefore, a consensus on proposed changes to the regulation could not be reached.

The public comments helped the Agency refine the areas for proposed change. In 1988, EPA published a Notice of Proposed Rulemaking (NPRM) (53 FR 25970; July 8, 1988) that proposed significant changes to the then existing WPS, including the following:

- Expansion of the scope of establishments covered;
- Revision of reentry intervals to correlate with risks posed by each pesticide;
- Revision to the PPE requirements;
- Improvement to worker notification provisions; and
- Strengthening compliance with the regulation by designating specific responsibilities of agricultural employers.

Following the publication of the NPRM, EPA held public meetings across the country, primarily in major agricultural areas, to explain the proposed rule and to respond to questions. EPA received 380 written comments from the public on the proposed rule.

After review and careful analysis of the public comments, the Agency promulgated the final rule, revising the WPS and adding Subpart K (Labeling Requirements for Pesticides and Devices) to 40 CFR part 156 in August 1992 (57 FR 38101; August 21, 1992). Shortly after publication of the final rule, agricultural groups raised concerns related to the availability of materials necessary to implement the rule and insufficient numbers of qualified trainers. Based on these concerns, Congress enacted legislation delaying implementation of the final rule. In response to the concerns raised, EPA worked with stakeholders to develop training materials that were tested with focus groups to ensure that they were appropriate for the language and literacy level of the target training audiences. In response to identified training needs, EPA has developed training materials in many languages, including Spanish, Chinese (Mandarin), Tagalog, Haitian Creole, Hmong, Ilocano, Khmer, Laotian, Polish, Portuguese, and Vietnamese. EPA's revisions to the WPS were fully implemented in 1995. The expanded regulation provided protections for agricultural workers from pesticide exposure on farms and in forests, nurseries, and greenhouses; included agricultural handlers; and held agricultural employers and pesticide applicators responsible for complying with specific portions of the regulation.

Since promulgating the WPS in 1992, EPA has made several minor amendments. In 1995, EPA published a series of **Federal Register** notices: (1) Reducing the grace period for agricultural employers to provide pesticide safety training to workers from 15 days to 5 days (60 FR 21943; May 3, 1995), (2) establishing a 5-year retraining interval for workers and handlers (60 FR 21943; May 3, 1995), (3) exempting certain persons performing crop advisor tasks from WPS provisions except for pesticide safety training, (60 FR 21948; May 1995), and (4) creating exceptions to the WPS to allow workers to enter pesticide-treated areas during an REI under specified conditions to perform irrigation tasks (60 FR 21960; May 3, 1995) and tasks that involve limited contact with pesticide-treated surfaces (60 FR 21955; May 3, 1995).

In 1996, EPA amended the regulation to: (1) Reduce the number of days employers must provide to workers decontamination supplies (soap, water, paper towels) after application of pesticides that are low risk and have REIs of four hours or less (61 FR 33207; June 26, 1996), (2) allow substitution of the language commonly spoken and read by workers for the Spanish portion of the warning sign (61 FR 33202; June 26, 1996), and (3) allow the use of smaller signs in nurseries and greenhouses (61 FR 33202; June 26, 1996).

Lastly, in 2004, EPA published a notice in the **Federal Register** revising the WPS glove requirements. This notice allowed all early-entry workers and handlers to wear disposable glove liners under chemical-resistant gloves and eliminated the requirement for aerial applicators to wear chemical-resistant gloves when entering and exiting aircraft that have been used to apply pesticides unless required by the labeling (69 FR 53341; September 1, 2004).

During the course of the states' implementation of the 1992 WPS regulation, regulatory partners, the regulated community, and other stakeholders raised numerous policy and enforcement questions. EPA addressed most of these questions through reference to the official rule text or the Agency's responses to public comments on the proposed rule. Some questions, however, raised interpretive issues that required the Agency to develop and issue interim guidance. EPA coordinated the development of guidance through an interpretive guidance workgroup (IGW) using a collaborative process that included all relevant and affected EPA offices, and state regulatory partners from the Florida Department of Agriculture and Consumer Services and the New Mexico Department of Agriculture. The State FIFRA Issues Research and Evaluation Group nominated the state participants on the IGW.

The IGW addressed the questions raised by stakeholders. The final IGW guidance clarified definitions for terms used in the rule, the scope of the WPS exceptions, and the intended scope and/or limits of provisions. The final IGW guidance has been compiled into a document available to the public (Ref. 14).

Although the IGW document provided answers to many of the issues raised by stakeholders to EPA, it is only guidance. Therefore, the IGW document is not legally binding on EPA, workers, handlers, agricultural establishments, and others. EPA proposes to codify

certain of the elements in the IGW guidance document, as discussed in Units VII through XVIII.

At the same time EPA published the 1992 WPS, the Agency also published an NPRM on a Hazard Communication/Right-to-Know program for agricultural workers (57 FR 38167; August 21, 1992). This NPRM responded to comments received in response to the 1992 proposed rule noting that protections for agricultural workers could not be considered complete until workers were provided with specific hazard information. Many comments called for EPA to adopt requirements parallel to those imposed by OSHA rules. In the 1992 proposed rule, EPA proposed options for providing written information about the specific hazards posed by pesticides in the workplace, for alleviating confusion about possible conflict and duplication between EPA and OSHA regulation of occupational safety and health in pesticides, and for supporting states in developing their own hazard communication programs. EPA never promulgated a rule finalizing a Hazard Communication/Right-to-Know program for agricultural workers because Agency resources were diverted to develop training and compliance assistance materials to implement the WPS as mandated by Congress. The Agency also wanted to solicit more stakeholder feedback about states' experiences implementing different approaches to hazard communication before moving forward with a final regulation.

*B. Stakeholder Engagement*

Over the last 20 years, the Agency has repeatedly engaged the public and particularly affected stakeholders in the assessment of the 1992 WPS and its implementation. This stakeholder engagement process has provided EPA with a deep appreciation of the complex challenges facing federal, state and tribal authorities, agricultural employers, and workers and handlers in the ongoing effort to ensure pesticide use is safe.

Immediately following full implementation of the 1992 WPS, EPA began the Pesticide Dialogue Process. From 1996 to 2000, EPA held public meetings across the country for open dialogue on rule implementation, challenges in compliance, and perceived effectiveness. The meetings were open to the general public.

The Agency initiated the National Assessment of EPA's Pesticide Worker Safety Program (National Assessment) in 2000. Through this process, EPA convened stakeholder meetings in Texas, California, and Florida. Participants included representatives from farmworker organizations, cooperative extension services, commodity organizations, state regulatory agencies, federal agencies, pesticide manufacturers and distributors, and individual workers, handlers, and growers. Stakeholders provided information about the strengths and weaknesses of the WPS's protections and implementation. EPA established three workgroups: general training (Ref. 15), train-the-trainer (Ref. 16), and hazard communication. Each of the workgroups met apart from the public meetings to assess specific aspects of the WPS and to recommend improvements. EPA held a final meeting in Washington, DC at which the workgroups presented their findings to EPA.

The assessment concluded in 2005 with the presentation of the ''Report on the National Assessment of EPA's Pesticide Worker Safety Program'' (Ref. 17). The opinions and suggestions made during the course of the assessment centered on a few broad improvement areas: the expansion and upgrade of applicator competency and worker safety and promotion of safer work practices, improved training of and communication with all pesticide workers, increased enforcement efforts and improved training of inspectors, training of health care providers and monitoring of pesticide incidents, and finally, program operation, efficiency, and funding (Ref. 17 p. 1). While EPA addressed some of the recommendations through grants, program guidance, and other outreach, others required regulatory change (Ref. 17 p. 26).

During the initial stages of the framing of this proposal, EPA's Federal Advisory Committee, the Pesticide Program Dialogue Committee (PPDC), formed a workgroup in 2006 to provide feedback to EPA on different areas for change. The workgroup had over 70 members representing a wide range of stakeholders. EPA shared with the workgroup suggestions for regulatory change identified through the National Assessment and solicited comments. The workgroup convened for a series of meetings and conference calls to get more information on specific parts of the regulation and provided its thoughts to the Agency. The workgroup never reached consensus; it focused on evaluating possible changes under consideration by EPA providing feedback from each member's or organization's perspective. Comments from the PPDC workgroup members have been compiled into a single document and posted in the docket.

EPA convened a Small Business Advocacy Review (SBAR) Panel on potential revisions to the WPS in 2008. The SBAR Panel was convened under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA). As part of the SBAR Panel's activities, EPA consulted with a group of Small Entity Representatives (SERs) from small businesses and organizations that could be affected by the potential revisions. EPA provided the SERs with information on the WPS and potential revisions and requested feedback on the proposals under consideration. EPA asked the SERs to offer alternate solutions to the potential proposals presented to provide flexibility or to decrease economic impact for small entities while still accomplishing the goal of improved safety.

The SERs provided feedback on the following areas: Requiring all treated areas to be posted, requiring pesticide safety training more frequently than every 5 years, eliminating the grace period between hiring a worker and providing pesticide safety training, and requiring showers on establishments that employ handlers. EPA compiled the responses from the SERs in an Appendix to the final Panel Report and posted the full report and appendix in the docket (Ref. 18). EPA considered the input from the SERs as part of the evaluation of available options for this rulemaking, and where appropriate, feedback from the SERs is discussed in various descriptions of proposed changes in this preamble.

In addition to formal stakeholder outreach, EPA met with numerous individual stakeholders when requested to discuss concerns and suggestions in detail. Stakeholders included farmworker organizations (Farmworker Justice, Migrant Clinicians Network, and El Comité de Apoyo a los Trabajadores Agrícolas [Farmworker Support Committee]); the National Association of State Departments of Agriculture (NASDA); the Association of American Pesticide Control Officials (AAPCO); Crop Life America (CLA); and others.

*C. GAO Audits*

In 1992, prior to the promulgation of the amended WPS, the General Accounting Office (now the Government Accountability Office; GAO) published ''Hired Farmworkers: Health and Well-Being at Risk'' (Ref. 19). The report discussed a number of services, such as social security, housing, field sanitation, job training and employment programs, children's education, and other issues that the government would need to

address to provide better conditions for farmworkers.

The 1992 report noted that at that time, EPA lacked an understanding of the health risks for many older pesticides, placing workers at risk from potentially unsafe exposure. The report also noted that the 1974 rule requirement to limit worker entry into treated areas was difficult for workers to follow. It prohibited reentry until ''sprays have dried or dusts have settled,'' language that involved subjective judgments. The 1992 amendments to the WPS partially addressed these issues by requiring interim protective intervals for worker entry into treated areas based on the acute toxicity of the product. Since that time, EPA's reregistration program, through which EPA reviewed and assessed older pesticides to ensure they continue to meet the FIFRA regulatory standard, has been completed. See Unit III.C. Through that process, chemical-specific protective reentry intervals have replaced the interim intervals.

In 2000, GAO issued another report, ''Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children,'' (Ref. 20). In this report, GAO focused more specifically on the potential risks to children of entering a pesticide-treated area. It noted that children under 12 years old may have a higher risk of adverse effects related to pesticide exposure and should be protected adequately. It also cited EPA data on WPS enforcement, noting the lack of consistency and involvement by EPA in monitoring the inspections and the need to have target numbers of inspections. The report recommended that EPA ''mitigate the potential adverse effects of pesticide exposure on children below the age of 12 who work in agriculture or are otherwise present in pesticide-treated fields'' (Ref. 20 p. 24). It also suggested that EPA improve oversight of state-level WPS enforcement and set standard guidance for inspections.

*D. Environmental Justice*

Executive Order 12898 (59 FR 7629; February 16, 1994) established federal executive policy on environmental justice. It directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their missions by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations in the United States. The Executive Order establishes four areas for action:

- Promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations;
- Ensure greater public participation;
- Improve research and data collection relating to the health and environment of minority populations and low-income populations; and
- Identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

EPA's goal is to promote environmental justice for all communities and persons across the United States, regardless of race, color, national origin, or income. Ensuring environmental justice means not only protecting health and the environment for everyone, but also ensuring that all people are treated fairly and are given the opportunity to participate fully in the development, implementation, and enforcement of environmental laws, regulations, and policies. Consistent with the Executive Order, the Agency's environmental justice policies promote environmental protection by focusing EPA's attention and efforts on addressing environmental risks among minority populations.

As discussed above in Unit IV.A., most workers and handlers intended to be protected by the WPS face significant disadvantages. Most agricultural workers and handlers belong to minority groups. Agricultural workers tend to have low literacy in any language and very limited skills in English. Very often workers do not have permanent housing and generally reside close to agricultural areas where pesticides are applied. Many workers and handlers are not residents or legal aliens in the United States. The low literacy rates, range of non-English languages spoken by workers and handlers, economic situation, geographic isolation, difficulty accessing health care, and immigration status of workers and handlers pose challenges for communicating risk management information and ensuring that these groups are adequately protected.

Occupational tasks performed by workers and handlers create a significant risk of pesticide exposure, which is increased by the communication barriers discussed above. In addition to potential exposure through work duties, studies show that workers and handlers face a greater risk of exposure to pesticide drift from neighboring areas than does the general population (Ref. 21). Pesticide exposure can also come through residues transferred by workers and handlers on their clothing and body from the treated areas to their cars and homes, and from the proximity of the housing to agricultural areas treated with pesticides (Ref. 21) (Ref. 22) (Ref. 23) (Ref. 24). Finally, pesticide exposure may occur from the consumption of treated foods in the treated area or washing hands in pesticide contaminated water (Ref. 25) (Ref. 26) (Ref. 27 p. 25).

Throughout the development of this proposed rule, the Agency has continued to use research on the demographic characteristics, work habits, and culture of the worker and handler populations to revise the WPS to ensure it provides effective protection. Information for the assessment and development of the rule was gathered through field research and interaction with workers, handlers, worker and handler representatives, and stakeholders. EPA extensively engaged farmworker representatives, and when possible, worked directly with workers and handlers, to solicit their feedback on the current regulation and ideas for improvement.

With this stakeholder input, the Agency identified areas where the existing WPS does not provide an appropriate level of protection and evaluated the potential impact of various options for strengthening the WPS for the worker and handler populations. That analysis identified areas for improvement to the rule, such as expanding training to provide information on how to minimize worker and handler exposure and that of their families from pesticide residues carried from the treated area to the home. The Agency's efforts to address environmental justice through this rulemaking were reviewed repeatedly during the development of the rule and its supporting documents. EPA believes that the proposed changes would improve the health of workers and handlers by, for example, increasing the frequency of training, enhancing training content to include ways to minimize pesticide exposure to children and in the home, adding posting of treated areas near worker and handler housing to prevent accidental entry, and establishing a minimum age for pesticide handlers and early-entry workers.

*E. Children's Protection*

An Executive Order issued in 1997 (62 FR 19885; April 23, 1997) and modified in 2003 (68 FR 19931; April

23, 2003) requires federal agencies to identify and assess environmental health risks that may disproportionately affect children. In response to this mandate, EPA established the Children's Health Protection Advisory Committee (CHPAC) to advise and make recommendations to EPA on issues related to children's environmental health. The CHPAC recommended that EPA ''re-evaluate the worker protection standard in order to determine whether it adequately protects children's health'' (Ref. 28). In a **Federal Register** Notice issued on February 3, 1999, EPA committed to conducting an assessment of the implementation and enforcement of the WPS (64 FR 5277; February 3, 1999).

Children face risks from exposure to agricultural pesticides mainly through work in pesticide-treated areas. A 2003 study by Calvert, et al. identified 531 children under 18 years old with acute occupational pesticide-related illnesses over a ten-year period (Ref. 29). The same study raised concerns for chronic impacts: ''because [the] acute illnesses affect young people at a time before they have reached full developmental maturation, there is also concern about unique and persistent chronic effects'' (Ref. 29).

Although no conclusive data exist, studies have been conducted to evaluate whether children of agricultural workers and handlers may face elevated potential for exposure from pesticide residues brought to the home by their parents (Ref. 30) (Ref. 31). Studies have also been conducted to evaluate whether this exposure scenario may have contributed to negative health or developmental effects (Ref. 32). Higher concentrations of pesticide residues combined with the susceptibility of children to the effects of pesticide exposure may increase the likelihood that children will be adversely impacted. EPA recognizes the need for more conclusive data on exposure to children from pesticide residues brought into the home by agricultural workers. However, given EPA's commitment to protecting children and to the principles of environmental justice, EPA believes the cost of adding a few minutes to pesticide safety training is reasonable when compared to the benefit of reducing the potential risk.

The FLSA's child labor provisions, which are administered by the Department of Labor, permit children to work at younger ages in agricultural employment than in non-agricultural employment. Persons 12 and 13 years old may work in agriculture outside of school hours in nonhazardous jobs if they are either working on the same farm as a parent or person standing in the place of a parent, or working with parental permission. 29 U.S.C. 213(c)(1)(B). Children under 16 years old are prohibited from doing hazardous tasks, including handling or applying pesticides that are classified as toxicity category I or II but can apply pesticides that are classified with a lower acute toxicity. (29 CFR 570.71(a)(9))

In summary, children working in agriculture and children of agricultural workers and handlers may be at a higher risk of pesticide exposure and illness; EPA believes these potential risks warrant careful consideration in light of the provisions of the Executive Order on children's health (EO 13296). EPA believes that the proposed changes could protect children from many of the risks they may face.

*F. Regulatory Review*

In 2005, EPA reviewed the WPS pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of the review was to determine whether the rule should be continued without change, amended, or rescinded to minimize economic impacts on small entities while still complying with the provisions of FIFRA. EPA solicited comment on the continued need for the WPS; the complexity of the WPS; the extent to which it overlaps, duplicates, or conflicts with other federal, state, or local government rules; and the degree to which technology, economic conditions or other relevant factors have changed since the WPS was promulgated. See EPA Docket ID number OPP–2003–0115 at *www.regulations.gov*. The Agency received no comment on the action and concluded that the rule needs no revisions to minimize impacts on small entities while still complying with FIFRA.

While EPA found that no changes were necessary to minimize the impacts on small entities, EPA believes that the WPS should be updated for the reasons discussed in the previous sections. Through the assessment process, EPA reviewed the 1992 WPS to determine whether the requirements were effective, sufficiently protective, and unduly burdensome on employers. As discussed in Unit V.B., EPA engaged in a substantial stakeholder engagement process, apart from the 2005 review mentioned in the previous paragraph, to review the effectiveness of the current regulatory requirements, to identify gaps in protection, and to determine flexible approaches to compliance for the regulated community. EPA engaged with small business representatives to explore flexible options for compliance. EPA believes the proposed changes reflect the current understanding of the risks faced by workers and handlers, thereby substantially improving the protections afforded to workers and handlers under the WPS and decreasing the overall burden associated with compliance for employers.

## VI. Overview of Proposed Revisions to Part 170

Earlier Units of this preamble describe the various ways that workers, handlers, and their families can be exposed to pesticides. The stakeholder engagement described in Unit V.B. resulted in many recommendations for EPA to revise the regulation. Through the SBAR panel, SERs raised the need for EPA to be mindful of the burden the WPS imposes on small business and to reduce it wherever possible (Ref. 18).

As discussed earlier in this document, EPA has imposed requirements on the use of pesticides with the intent of averting unreasonable adverse effects to human health and the environment. These requirements include the WPS and pesticide-specific use restrictions found on product labeling. In spite of these protections, worker and handler illnesses resulting from pesticide exposure are documented, and the Agency believes they are underreported. Peer-reviewed studies, based on pesticide illness reporting and surveillance initiatives show evidence of illnesses to workers and handlers. For example, one study finds that acute pesticide poisoning incidents in the agriculture industry ''continues to be an important problem'' (Ref. 11). This study examined pesticide poisoning incidents among agricultural workers from 1998–2005, and analyzed 3,271 cases. Illness rates varied by category, but across agricultural worker categories, risks of poisoning were an order of magnitude higher than for almost all non-agricultural workers, which include farmers, processing/packing plant workers, and other miscellaneous agricultural workers. A study conducted by Das, *et al.,* identified 486 pesticide illness cases among California farmworkers for 1998–1999, based on a surveillance program with mandatory reporting by physicians. The study found that about half of all acute pesticide-related illness cases in the California surveillance system affected agricultural workers (Ref. 33). Over a quarter of the poisonings were to those mixing, loading or applying pesticides. The most common symptoms were dermatological (about 44%),

neurological (about 39%), and gastrointestinal (about 38%), and the most common route of exposure was skin contact, followed by inhalation and eye contact.

A 2008 report indicates that from 1998 to 2005 the major causes of occupational pesticide exposure were off-target drift, early reentry into a treated area, and pesticide use in conflict with the labeling (Ref. 11). Studies have been conducted to evaluate whether worker and handler families are exposed to pesticides because workers and handlers bring pesticide residues home on their body, shoes, and clothing (Ref. 23) (Ref. 24) (Ref. 34). These studies recommend that workers and handlers receive more specific information on how to protect their families and avoid exposure in the workplace (Ref. 23) (Ref. 24) (Ref. 34).

EPA believes the proposed changes address the specific avenues of occupational exposure and recognize the specific needs of the worker and handler population. Units VII. to XX. describe the proposed changes and alternative options considered by EPA. The presentation is generally structured to provide, where appropriate:

- A concise statement of the proposed change;
- The current WPS requirements;
- Stakeholder feedback and research supporting the proposed change;
- A detailed description of the proposed change and the rationale for the change;
- An estimated cost;
- A description of significant alternatives considered by EPA and the reasons for not proposing them; and
- Specific questions on which the Agency seeks feedback.

For purposes of discussion, EPA groups the proposed changes and considered alternatives as follows:

- Unit VII: Changes to the training for workers and handlers, including new recordkeeping requirements, multiple changes to the content of the training, and trainer qualifications.
- Unit VIII: Changes to the worker and handler notifications including posted and oral notifications and revisions to the warning sign content.
- Unit IX: Hazard communication materials.
- Unit X: Information that handlers and agricultural employers must exchange.
- Unit XI: Handler restrictions including minimum age requirements for handlers.
- Unit XII: Expansion of entry-restricted areas, minimum age requirements for workers entering a treated area under an REI, and clarification of the REI exceptions.
- Unit XIII: Pesticide safety information display, including location and content required.
- Unit XIV: Decontamination requirements for handlers and early entry workers.
- Unit XV: Emergency assistance.
- Unit XVI: Personal protective equipment, including the use of closed systems.
- Unit XVII: Monitoring handler exposure to cholinesterase-inhibiting pesticides.
- Unit XVIII: Exemptions for immediate family and crop advisors and exception to requirement for workers to be fully trained before entering a pesticide-treated area.
- Unit XIX: General revisions to the WPS.
- Unit XX: Implementation.

## VII. Training for Workers and Handlers

The current WPS allows employers to utilize a ''grace period'' to provide workers with basic training before entering the treated area and before the 6th day that workers begin working in an area covered by the WPS to provide the full pesticide safety training discussed below. This provision is considered an exception to the training requirements; therefore, the current ''grace period'' and proposed amendments are discussed in Unit XVIII.C.

### *A. Shorten Retraining Interval for Workers and Handlers*

1. *Overview.* The WPS currently requires employers to ensure that workers and handlers are trained once every five years. EPA proposes to establish an annual retraining interval for workers and handlers in order to improve the ability of workers and handlers to protect themselves and their families from pesticide exposure.

2. *Existing WPS regulations.* The WPS requires agricultural and handler employers to ensure that handlers and workers receive pesticide safety training once every five years (40 CFR 170.130(a) and 170.230(a)). This retraining time period was initially implemented to minimize burden on employers when pesticide safety training was first introduced, due to the limited number of trainers available at the time. Worker and handler trainings, as discussed in Unit VII.E., provide information on protecting oneself and family from pesticide exposure, recognizing and avoiding dangers in the workplace, and steps to take in the event of pesticide exposure.

3. *Summary of the issues.* Many stakeholders have commented that a 5-year retraining interval is too long for workers and handlers to retain the safety information (Ref. 17) (Ref. 28) (Ref. 35) (Ref. 15) (Ref. 36) (Ref. 37). Through the National Assessment, letters to the Agency, and feedback from PPDC on proposed options, various stakeholders have recommended shortening the current interval in order to improve workers' and handlers' understanding and recall of the material covered. The General Training Issues Workgroup, with representatives from across the agricultural community, recommended shortening the retraining interval for workers and for the Agency to base the standard on retraining intervals for other similar professions (Ref. 16).

Research has indicated the importance of repetition in an individual's retention of information (Ref. 38). Stakeholders, particularly pesticide safety educators, have noted that ''repeating basic safety messages increases adoption of improved safety practices.'' (Ref. 39) Providing training more frequently than the current requirement of every five years may be especially beneficial for workers and handlers with limited knowledge of English or another widely used language, e.g., Spanish, or who have recently started working in an agricultural job, who may need additional review to fully understand the material. Worker advocacy groups and educators have repeatedly noted that more frequent training is important for the worker community.

Additionally, a 2007 report for the EPA by JBS International titled ''Hazard Communications for Agricultural Workers'' reported that workers who were interviewed wanted more frequent training on pesticide safety (Ref. 40). Workers requested training to occur at least once a year.

The DOL's NAWS provides information on the nature of worker employment and turn-over rate. The most recent report available notes that ''[i]n 2001–2002, crop workers, including foreign-born newcomers, had been employed with their current farm employer an average of four and a half years. Thirty-five percent had been working for their current employer for one year or less, and 12 percent had been employed at their current farm job for ten or more years (Ref. 3).

Agricultural employers that provided information to EPA during the SBAR panel process on the WPS stated that they already provide annual pesticide training, since verification of previous training can be difficult to achieve and the employers want to ensure they comply with the WPS to avoid liability. EPA has heard similar statements in

discussions with farmers in other venues, but recognizes that all employers may not provide annual training. The Panel recommendations recognized the value of retraining, and specifically its ability to emphasize and remind the worker of important safety principles (Ref. 18). State and federal enforcement agents have also noted the difficulty in determining if a worker or handler has been trained, when relying on his recall of the training material over a long time period, e.g., 5 years.

4. *Details of the proposal/rationale.* The Agency proposes to establish an annual retraining interval for workers and handlers. Accordingly, this would reduce the maximum time between trainings for workers and handlers from 5 years to 1 year.

EPA believes that more frequent repetition of the protective principles outlined in the pesticide safety training is particularly important given the demographics of the worker population. As data cited earlier show, workers generally have low literacy and limited understanding of English. Therefore, it is important for workers and handlers to receive the information in a manner they understand and with sufficient frequency to ensure they retain the information.

Research shows that adults remember only about 10% of what they hear and 50% of information that they see and hear (Ref. 41). EPA expects the more frequent review of pesticide safety information, in combination with the proposal for expanded display of pesticide safety information at decontamination sites [see Unit XIII.A.], would improve retention of safety principles and hygiene practices critical to self-protection, reinforce the importance of protecting families from pesticide exposure, encourage handlers' adherence to label requirements, and remind workers and handlers of the obligations of their employers under the rule.

This proposed rule reflects previously established training requirements for similar occupational hazards. Federal agencies already require annual training when hazardous substances may be encountered in the workplace in many other industries. OSHA regulations require employers to provide annual training to protect employees from chemical hazards in the workplace including lead (29 CFR 1962.62(l)(1)), asbestos (1926.1101(k)(9)), and cadmium (29 CFR 1926.1127(m)(4)). Under the Resource Conservation and Recovery Act (RCRA), EPA requires personnel at hazardous waste treatment, storage, and disposal facilities to have annual training as well (40 CFR parts 264 and 265). The risks from pesticide exposure through agricultural work are similar to the threats posed by hazardous chemicals in other industries, and the Agency believes training requirements to protect agricultural workers and handlers should be comparable to those required by OSHA. In addition, agricultural and handler employers may already be required to keep records of annual training required by other regulations, such as those listed above. EPA believes that agricultural and handler employers would track an annual requirement for WPS training along with required OSHA trainings and employment records, such as those required by the Department of Labor.

The proposed regulatory text concerning shorter retraining intervals for workers and handlers appears in §§ 170.101(a) and 170.201(a), respectively, of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of the requiring employers to provide pesticide safety to training workers annually would be $8.7 million per year. Training its workers would cost each agricultural establishment about $22 per year. EPA estimates the cost to employers to provide pesticide safety training to handlers annually would be $3.5 million per year. The average cost of training handlers would be about $17 per year for agricultural establishments and $66 per year for commercial pesticide handling establishments. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

While EPA can estimate the costs of this proposed change, quantifying the benefits is more difficult. Nonetheless, based on the information and expert views described in this section, it is reasonable to expect that more frequent training would lead to better retention of information by workers and handlers, ultimately resulting in fewer incidents of pesticide exposure and illness in workers and handlers, reduced take-home exposure, and better protection of children. The Agency concludes that the estimated costs are reasonable when compared to the anticipated benefits resulting from the additional training.

6. *Alternative options considered but not proposed.* The Agency considered three alternative approaches to the retraining interval for workers and handlers. The first alternative was recommended by the SBAR panel, based on a comment from one of the SERs. This option would require annual retraining and offer small establishments, those with fewer than 10 employees, the option to provide training less frequently for workers (Ref. 18). A small establishment requesting flexibility would be required to maintain documentation to show that (1) no additional workers were hired within the retraining interval, (2) no new or different pesticide applications were made from the previous year, and (3) they provided training for the specific workers on the establishment previously. If the establishment added any new employees, it would not be eligible to provide less frequent training. The estimated cost for this option would be about $7.5 million annually, or $60 for large agricultural establishments and $12 for small agricultural establishments. The Agency agrees that this option could reduce the burden on small entities of providing annual training, but it would also reduce the benefit workers would receive from annual retraining. Moreover, EPA notes that implementation of such an exception would increase recordkeeping burdens on all small establishments that would offset, to some degree, the savings for some establishments from not having to provide training. The additional recordkeeping costs were not quantified. Under this exception, those small entities that added a new employee or applied a different pesticide during the year would actually have higher costs, even though the overall burden on small entities might be somewhat smaller. Based on the marginal cost reduction, increased recordkeeping burden, and potential risk to workers who would not receive training annually, the Agency thinks that requiring all establishments to provide annual training is more appropriate.

EPA also considered a 2-year retraining interval for all establishments. EPA estimates that biennial training for workers would cost about $3.2 million per year, or about $8 per agricultural establishment per year. Biennial training for handlers would cost about $1.6 million per year, or $8 per agricultural establishment and $27 per commercial pesticide handling establishment per year. While biennial training would provide more protection to workers and handlers than the current 5-year retraining interval, EPA believes the longer timeframe would not improve retention to the extent expected from annual training. Employers are already required to provide and track OSHA trainings and to maintain employment records, such as those required by the Department of Labor, on an annual basis; requiring pesticide safety training every 2 years could

increase the burden on agricultural and handler employers to track the WPS training on a different schedule. Representatives on the SBAR panel indicated that many employers already provide training on an annual basis as part of their hiring process (Ref. 42 p. 2). EPA believes that even with a biennial training requirement, many employers would continue to provide training annually. Therefore, the burden on employers would not be significantly reduced by a biennial training requirement. EPA believes the costs of more frequent annual training are reasonable when compared to the anticipated benefits, particularly when combined with the stakeholder reports that annual training is already provided in many cases.

Finally, EPA considered requiring a written test to gauge the workers' or handlers' knowledge about the topics covered in training to ensure that they have the information needed for self-protection. The Agency, however, was dissuaded from this alternative due to concerns for the ability of workers and handlers to successfully complete an exam, even when they have been adequately trained, on account of literacy and language challenges among workers and handlers. Some stakeholders have indicated that noncertified applicators, who have similar demographic profiles to workers and handlers, may find it difficult to pass a written examination due to literacy and language barriers; the Agency believes workers and handlers may have similar difficulty (Ref. 36) (Ref. 37). Concerns exist for the perceived burden on employers for providing the time for needed training and exam-taking, and for the potential reduction in workforce when workers or handlers cannot pass the exam, despite being aware of the training content (Ref. 36) (Ref. 37). While testing might be a useful approach in some situations, the Agency believes that in this context a testing requirement is less likely than annual retraining to produce the desired improvements in workers' and handlers' understanding of pesticide safety. Therefore, EPA is not proposing testing as an alternative to annual training.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Should EPA consider different pesticide safety training timing? If so, what timeframe and why?
- Do you have information concerning the relationship between the frequency of training of workers and handlers and the frequency of incidents of pesticide exposure or illness? If so, please provide.
- Are there other ways EPA could ensure that workers and handlers retain the information presented in pesticide safety training so the retraining interval can be longer than one year?
- Are there other burdens or benefits associated with a 2-year retraining interval that EPA has not considered?
- What would be the impact of a 1- or 2-year retraining interval on states and tribes?
- Should EPA consider retaining the current 5 year retraining interval for workers and handlers and adding a requirement for annual refresher training? Please provide information on the relative benefits to and burdens on employers, workers, and handlers. EPA currently envisions that, if adopted, the annual refresher training for workers would include the topics proposed at 170.309(e), the grace period training (see Unit XVIII for a full discussion of the proposed points for training workers under the grace period). The annual refresher training for handlers would include a review of information necessary for handlers to protect themselves, their families, workers, and the environment from pesticide exposure. EPA anticipates that the refresher training would be slightly shorter in duration than the proposed full pesticide safety training, but seeks comment on the duration of such refresher training. Retaining the current 5 year retraining interval and adding a requirement for annual refresher training would necessitate additional recordkeeping by the employer. The employer would maintain training records for workers and handlers as discussed in Unit VII.B. below, as well as records containing the same information for the refresher training.

### *B. Establish Recordkeeping Requirements To Verify Training for Workers and Handlers*

1. *Overview.* The existing WPS does not establish any mandatory mechanism for verifying that a worker or handler has received pesticide safety training. To improve compliance with the WPS training requirements and to address the absence of documentation of worker and handler training, the Agency proposes to eliminate the voluntary training verification card system and to require employers to maintain records of WPS worker and handler training for two years. In addition, the employer would be responsible for providing a copy of the record to each worker or handler upon completion of the training. EPA believes a requirement for employers to maintain the training roster, an official record, of employees' training would address current enforcement difficulties in verifying whether a worker or handler has received training. The requirement to provide workers and handlers with a copy of the training record would allow a subsequent employer to verify that the worker or handler had received training and to copy the training verification record for the subsequent employer's own files.

2. *Existing WPS requirements.* Presently, the WPS does not require agricultural employers to document that they provided the training required under the WPS for workers or handlers. The WPS also does not require trainers or employers to record who they trained, what training they provided, or when they provided pesticide safety training. However, a voluntary program was established that allowed states, tribes, and agricultural employers to use verification cards to identify workers and handlers trained in accordance with the WPS. Participating states, territories, and tribes have opted to distribute cards printed by EPA or to generate agency-specific cards. States, territories, and tribes allow distribution of the cards by trainers qualified under the WPS or under stricter requirements. A few entities require trainers of workers or handlers to submit the names of those trained to the state regulatory agency; however, EPA does not maintain such a list. Under the current voluntary training verification card program, an agricultural or handler employer who hires workers and handlers with valid training verification cards does not need to provide training until the expiration date listed on the card. At least 20 states, territories, or tribes continue to use the voluntary training card system (Ref. 43).

3. *Summary of the issues.* Since 1998, EPA has received considerable feedback from stakeholders, including state regulatory partners, regarding the difficulty of enforcing the training provisions of the WPS rule, primarily due to a lack of recordkeeping (Ref. 17) (Ref. 18). Inspectors have noted that they cannot consult a record to determine if the workers and handlers on the establishment have been trained. Their primary method for evaluating compliance with training requirements is to interview workers and handlers regarding the content of training received or whether any training has occurred. Stakeholders, including state inspectors and farmworker organizations, have indicated that interview results may be compromised as workers and handlers may not recall the training they received, may not connect the questions with the training information, and may not be able to communicate with the inspector in a

language that both are comfortable speaking. Some workers and handlers may feel intimidated and provide inaccurate responses due to a lack of anonymity. Some states and territories, including AZ, CA, HI, NV, NH, NJ, PA, and PR, have addressed the issue through requiring a form of recordkeeping for worker and/or handler training, such as training records maintained by the employer, training records submitted to the state, or making mandatory the voluntary training verification card system. California has implemented a requirement for employers to maintain records of handler training for 2 years (3 CCR 6724(e)).

Some stakeholders voiced strong support for improved recordkeeping as discussed in reports from the National Assessment of EPA's Pesticide Worker Safety Program (Ref. 44). The General Training Issues Workgroup, convened as part of the National Assessment, recommended that all trainers be required to maintain records of trained workers for the duration of the retraining interval, and suggested that EPA offer a variety of methods for employers to demonstrate compliance (Ref. 15). Farmworker organizations as well as other stakeholders have repeatedly emphasized the need to improve enforcement and compliance verification capabilities in order to assure greater protection for workers (Ref. 17) (Ref. 35).

States, territories, and tribes have noted that the voluntary training verification card system is undermined by fraudulent cards. They cite instances of workers, handlers, and labor contractors illegally exchanging cards and altering the expiration date. Without an expiration year printed on each card and annual reprinting of current verification cards, it is difficult to assess the validity of the card. Without any requirement for creating and maintaining records of training, it is virtually impossible to verify who has been trained. States have informed the Agency that workers perceive the card as a credential that potential employers may use to determine their employability. As a result, state agencies have reported that falsified cards are common because workers and handlers want to show that they are employable. The Agency believes, based on information gathered since the implementation of the training verification card system, that the current system of voluntary training verification cards has proven to be an unreliable method of tracking and identifying trained workers (Ref. 37) (Ref. 45) (Ref. 46).

4. *Details of the proposal/rationale.* The Agency proposes to require agricultural and handler employers to keep records of all workers and handlers who receive pesticide safety training for 2 years on the agricultural establishment. Required information for the record of worker and handler training would include the trained worker's or handler's name, signature, date of birth, the date of training, the trainer's name, proof of trainer's qualification to train, the employer's name, employer's phone number or phone number of the establishment, and which EPA-approved training materials were used. EPA also proposes to require employers to provide a copy of the training record to each worker and handler upon completion of the training.

EPA believes these new recordkeeping requirements would address some of the difficulties in effectively enforcing the existing rule raised by regulatory and farmworker advocacy stakeholders. This proposal would allow inspectors to verify training through records retained by the employer and maintained by the workers and handlers themselves rather than solely through interviews with workers and handlers. The Agency's proposal is flexible in that it would allow paper or electronic recordkeeping, so an employer could scan the training records with employees' signatures and maintain electronic files.

The recorded date of birth would be used to verify that the minimum age for handlers and early-entry workers has been met. [See Units XI.B. and XII.A.] Retaining the trainer's proof of qualification to train would allow the inspector to determine if the trainer met the criteria to be a trainer. [See Unit VII.D]

EPA recognizes the importance of maintaining some mechanism for workers and handlers to change employers without repeating pesticide safety training each time they enter an establishment. EPA believes that the proposed option would meet the need for employers to verify that workers and handlers have received appropriate training by providing an official record rather than the voluntary training verification card. The proposal to require employers to maintain specific records of worker and handler training and to provide a copy of the training record to each trained worker and handler would make the voluntary training verification card program obsolete, redundant, and unnecessary. An employer could consider a worker or handler trained if either the employee or prior employer presents a copy of the training record. EPA believes requiring employers to provide a record of the training to workers and handlers would allow workers and handlers to show future employers they have received WPS training. In addition, future employers could maintain a copy of the workers' or handlers' record in their files to comply with the requirement to ensure the employees have received the appropriate training.

The proposed regulatory text concerning the recordkeeping requirements to verify training for workers and handlers appears in §§ 170.101(d) and 170.201(d), respectively, of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of requiring employers to maintain records of worker training for 2 years would be $1.6 million annually and about $4 per agricultural establishment per year. The cost for employers to maintain records for handler training for 2 years would be $160,000 annually, or less than $1 per agricultural establishment and about $3 per commercial pesticide handling establishment per year. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

Although EPA cannot quantify the benefits of this specific proposed option, EPA believes that requiring records of worker and handler training would improve employers' compliance with the training requirements. Improved compliance would increase the likelihood that workers and handlers perform WPS tasks with the information necessary to mitigate exposure to pesticides for themselves and their family members.

6. *Alternative options considered but not proposed.* First, EPA considered an option to require the employer or trainer to provide every trained worker and handler with a wallet-sized verification record (similar to the current voluntary training verification card) that contains the proposed recordkeeping information, instead of the proposal to provide a photocopy of the training recordkeeping form. Distribution of the training verification cards would be limited to trainers who meet the proposed qualifications. [See Unit VII.D.] The cards would be issued by EPA on an annual basis and would indicate a date after which the card would no longer be valid, i.e., a 2015 card would state that it would not be considered a valid verification of training after 12/31/2016. The annual card issuance by EPA and clear statement of the card's longest potential

validity could help cut down the issues of fraudulent use raised by states and other stakeholders.

This alternative would increase the burden on trainers, employers, and EPA and states, territories, and tribes. Instead of providing a copy of the training record, the trainer would be required to copy the information onto each individual training verification card. Subsequent employers would need to verify the information on the card with the original trainer or employer and to obtain a copy of the original training record for their files. EPA would be responsible for printing cards annually. EPA and states, territories, and tribes would be responsible for distributing cards to approved trainers and tracking who received the cards. EPA estimates that a mandatory training verification card program for workers would add about $640,000 to the cost of training records, increasing the total cost to about $2.2 million. Based on the increased burden to trainers, employers, and states, territories, and tribes without significantly different anticipated benefits to workers, handlers, trainers, and employers, EPA decided not to propose this option.

Second, EPA also considered requiring agricultural and handler employers to submit worker and handler training records to EPA or to the state, territory, or tribal regulatory authority. The agency responsible at the federal or state, territory, or tribal level would then maintain a database of trained workers and handlers. The Agency believes that it is adequate for employers to maintain the records, making them available to inspectors upon request. The submission of training records to a central repository might benefit EPA and others wishing to verify a worker's or handler's status. However, employers would still bear the cost of either creating a record of the training in the central repository or verifying a worker's or handler's eligibility in the system. Since most workers and handlers have one or two employers per year, the burden on employers to report to and check with a central repository of information may not be justified. The proposed rule would require that the employer maintain records on-site for inspection purposes.

Third, EPA also considered an option to require trainers, rather than or in addition to employers, to retain records of those trained. EPA is not pursuing this option because the WPS focuses on the responsibilities of agricultural and handler employers. Trainers are not responsible for the use of the pesticide on the establishment and therefore cannot be legally responsible for following the labeling and complying with the WPS requirements. Ultimately, the agricultural or handler employer is responsible for ensuring that workers and handlers receive training and for tracking that training. Inspections focus on compliance of the agricultural or handler employer with the provisions of the WPS, not the trainer. The WPS would not prohibit the creation of training records by the trainer; however, the agricultural or handler employer would have to maintain a copy of the records.

Finally, the Agency considered establishing a 5-year interval for the record retention cycle, which would coincide with the statute of limitations for civil violations (28 U.S.C. 2462). The estimated cost of this requirement would be $2 million for worker training records and $290,000 for handler training records. The incremental cost between record retention for two or five years would be negligible. However, EPA believes based on state programs (e.g., California and Florida) and stakeholder feedback that a requirement to keep records for 2 years is sufficient. Therefore, EPA decided not to propose a 5-year interval for record retention.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Would a requirement for employers to report worker and handler training information to the state or federal government for compilation in a central repository have benefits? If so, please detail the potential benefits and cost.
- Should the Agency reconsider any of the alternate options presented in developing a final rule? If so, why? Please provide data to support your position.
- Are there changes that would make the training verification card program more effective and less prone to falsified cards? If so, please provide detailed suggestions for improving the system.
- Should EPA consider a performance standard to evaluate worker and handler training (asking questions based on the training content) rather than recordkeeping? Are there benefits or drawbacks to this approach that the Agency has not considered?
- Would employers rely on training records provided by the worker or handler as verification that the worker or handler had received pesticide safety training?

### *C. Require Employers To Provide Establishment-Specific Information for Workers and Handlers*

1. *Overview.* The existing WPS does not require employers to provide to workers and handlers establishment-specific information on the location of decontamination supplies as part of their pesticide safety training. In order to allow workers and handlers to adequately protect themselves in the event of an unexpected exposure that could occur through spills, being sprayed, or other unusually high exposure situations, the Agency proposes that in addition to required general training employers must provide establishment-specific information about the location of decontamination supplies and pesticide safety and hazard information, as well as how to obtain medical assistance. Agricultural and handler employers would be required to provide this establishment-specific information to all workers and handlers, including those previously trained on other establishments. The Agency expects this change will equip workers and handlers with the knowledge and capability to assist in better protecting themselves from adverse effects of pesticide exposure.

2. *Existing WPS regulations.* Sections 170.135(e) and 170.235(e) require the employer to notify workers and handlers respectively about the location of the pesticide safety poster and the emergency medical information. Presently, part 170 has no requirement for employers to provide information on the location of decontamination supplies or hazard information to workers and handlers.

3. *Summary of the issues.* Farmworker organizations have raised to EPA the need for workers and handlers to receive establishment-specific information even if the employer can verify that the workers and handlers have already received pesticide safety training. The pesticide safety training covers general self-protection principles. Establishment-specific information on where to find, among other things, decontamination supplies, emergency contact information, and pesticide application information, is not consistent across establishments. While the workers and handlers may have received general information on how to protect themselves, without knowledge of where the necessary supplies are located or how to obtain emergency medical assistance they would not be able to use the knowledge to protect themselves.

4. *Details of the proposal/rationale.* The Agency proposes to require employers to provide establishment-specific pesticide safety training for workers and handlers when they enter the establishment and before beginning WPS tasks. Content for the establishment-specific information

would include the location of pesticide safety information, the location of pesticide application and hazard information, the location of decontamination supplies, and how to obtain emergency medical assistance. Employers would be required to provide this training prior to the handler performing handler activities or the worker performing worker activities orally in a manner that the handler or worker can understand, such as through a translator. Lastly, this training would be required even if the employer can verify that the worker or handler has already received pesticide safety training on another establishment.

EPA acknowledges that some of this information is already required under the current rule. However, EPA believes that consolidating the requirements for establishment-specific training would make them easier for employers to find and comply with, resulting in a higher likelihood that workers and handlers would receive the necessary information.

The proposed regulatory text concerning the requirement for employers to provide location-specific information to workers and handlers appears in §§ 170.103 and 170.203(b) of the proposed rule.

5. *Costs and benefits.* The estimated cost of this proposal is included in the cost of expanded training discussed in Unit VII.E. EPA assumes that employers cover this information as part of routine pesticide safety training and therefore including the establishment-specific information would add negligible time and cost.

6. *Alternative options considered but not proposed.* EPA did not consider any significant alternatives to the proposed option.

7. *Request for comment.* EPA specifically requests comment on the following question:

- To what extent do employers already provide this information to all workers and handlers when they first arrive at the establishment, for example, during the hiring process?
- The current rule requires employers to ensure that the workers and handlers receive information in a manner they understand. Are there any issues with the current requirement for employers? If so, please describe and provide data to support this position.

*D. Establish Trainer Qualifications*

1. *Overview.* The current rule allows workers and handlers to be trained by a variety of persons, including certified applicators and handlers. In order to ensure that the pesticide safety training received by workers and handlers is provided in a manner conducive to adult learning and provided in a language and manner in which they can understand, the Agency proposes to require trainers of workers to have completed an EPA-approved train-the-trainer program or be designated by EPA or an appropriate state or tribal agency as trainers of certified applicators. Certified applicators would no longer be automatically considered qualified to train workers. The Agency proposes to retain the existing qualifications for handler trainers, namely that in order to be a trainer of handlers, one must be a certified applicator under 40 CFR part 171 at the time of the training, to have completed train-the-trainer program, or be designated by EPA or an appropriate state or tribal agency as a trainer of certified applicators and to limit approval of train-the-trainer programs to EPA. In addition, EPA proposes to require trainers to be present throughout the training and to ensure that there are no distractions, *e.g.,* background videos, loud machinery, or other instructions, competing for the worker's or handler's attention.

2. *Existing WPS regulations.* The existing WPS designates the following groups as qualified to be pesticide safety trainers for workers:

- Applicators certified according to 40 CFR part 171 (private and commercial applicators of RUPs);
- Persons designated as trainers of certified applicators, or pesticide handlers by the appropriate state, federal, or tribal agency;
- Individuals who have completed an approved pesticide safety train-the-trainer program; or
- Persons who have completed WPS handler training.

The existing WPS designates the following groups as qualified to be pesticide safety trainers for handlers:

- Applicators certified according to 40 CFR part 171;
- Persons designated as trainers of certified applicators or pesticide handlers by the appropriate state, federal, or tribal agency; and
- Individuals who have completed an approved pesticide safety train-the-trainer program.

The current WPS also requires trainers to be present to answer questions but does not require that they be present for the entire length of the training.

3. *Summary of the issues.* When EPA proposed what would become the 1992 WPS (53 FR 25970; July 8, 1988), stakeholders, specifically USDA and farmer organizations, raised concerns about the need for adequate numbers of qualified WPS trainers. To ease the burden of transition for agricultural employers during the implementation of the rule, EPA made approved criteria for trainers in the final rule (57 FR 38102, 38128–29; Aug 21, 1992) intentionally broad. Since that time, the pool of qualified trainers has expanded due to the increase and availability of train-the-trainer programs. EPA has supported the Association of Farmworker Opportunity Programs (AFOP) ''Serving America's Farmworkers Everywhere'' AmeriCorps project for over ten years. This project connects trainers with farmworker communities to build training capacity and to provide free training services to agricultural and handler employers. In addition, EPA has developed a train-the-trainer handbook for worker training (Ref. 47). Many states have also increased the number of qualified trainers through train-the-trainer programs and other mechanisms.

Farmworker organizations and pesticide safety educators have raised to EPA the importance of pesticide safety trainers having expertise both in the subject matter covered and in adult education for low-literacy audiences. The Hazard Communications for Agricultural Workers Report by JBS International found that workers want to receive pesticide safety training from trainers who are knowledgeable and certified (Ref. 40). In order to convey information about routes of pesticide exposure, potential accidents and how to mitigate pesticide exposure, and avoiding exposure through basic hygiene, the trainer must have a strong knowledge of the subject matter. A person can obtain this knowledge in several ways. First, a person who has gone through a train-the-trainer program would become versed in the specific information to be conveyed to the training audience. Second, a person who is qualified, as a university professor or cooperative extension agent, to conduct training for a broad range of pesticide users, would have a working knowledge of the potential pesticide risks faced by workers and handlers. Lastly, handlers and applicators learn the subject matter in the training and certification programs, which cover the concepts presented in pesticide safety training in more detail.

Research and stakeholder input have highlighted the need for trainers to have specific skills to reach this type of audience. Farmworker organizations and pesticide educators expressed concern about the ability of individuals without knowledge of adult education practices to conduct effective pesticide safety training (Ref. 39) (Ref. 46) (Ref. 48). Stakeholders have also informed EPA that training may be presented

simultaneously with other information, preventing workers and handlers from focusing completely on the safety information presented.

Stakeholders have raised concerns that trainers lacking skills in adult education may be ineffective in communicating necessary pesticide safety information to workers (Ref. 35) (Ref. 36) (Ref. 48) (Ref. 46) (Ref. 39). Farmworker organizations have supported limiting eligibility of trainers of workers and handlers to those completing a train-the-trainer program ''covering methods of conducting an informal adult participatory education session for low literacy learners, with limited English proficiency'' (Ref. 35). A pilot train-the-trainer program in Washington State showed that participants who learned training techniques applicable to the worker population were more successful in communicating with their target audience than they had been prior to training, indicated by improved performance of the audience on a post-training evaluation of knowledge (Ref. 17).

4. *Details of the proposal/rationale.* EPA proposes to require trainers of workers to complete a pesticide safety train-the-trainer program approved by EPA or to be designated as a trainer of certified applicators by EPA or a state or tribal agency responsible for pesticide enforcement. The proposal would delete the option for certification under 40 CFR part 171 or training as a WPS handler to serve as sufficient qualifications for a person to be a trainer for workers.

Additionally, the Agency proposes to require trainers of workers and trainers of handlers to be present during the entirety of a training session and to answer questions. Trainers must also ensure that the training is presented in a manner free of distractions.

EPA proposes to retain the existing categories for trainers of handlers and to add a requirement that the train-the-trainer program be approved by EPA.

Under a cooperative agreement with the NASDA Research Foundation, EPA has developed the *National Worker Safety Trainer Handbook* (Ref. 47). This manual outlines the necessary pesticide safety information for workers, as well as describing adult education principles and how to communicate across languages and cultures. In addition to the *National Worker Safety Trainer Handbook,* EPA also supports the training of pesticide safety trainers of workers by AFOP. Both of these programs would serve as models for an EPA-approved train-the-trainer program. Using these models, EPA would develop guidance to describe the necessary elements of a train-the-trainer program and the process for seeking EPA approval. EPA anticipates that any interested organizations, including non-profit organizations, universities, state regulatory agencies, and the pesticide industry, could seek approval for and administer a train-the-trainer course that meets EPA's standards.

EPA proposes to retain the options for persons designated as trainers of certified applicators or handlers by EPA or a state or tribal agency responsible for pesticide enforcement because either EPA or the state or tribe has recognized that they have the subject matter expertise and qualifications necessary to convey the pesticide safety information to workers or handlers. Many cooperative extension services (part of land grant universities) have experts on pesticide safety that work with agricultural employers to provide information on safe pesticide use. EPA believes that in their role as educators and with knowledge of adult education, pesticide application, and safety principles, these persons are qualified to provide the information to workers and handlers. State regulatory agencies also hire or contract with adult educators to provide pesticide safety training to workers or handlers. Rather than increase the burden on the state or tribal lead agency by requiring that all persons complete a pesticide safety train-the-trainer course, EPA believes that state and tribal lead agencies would ensure that persons they designate as trainers can appropriately convey the information required under the proposed regulation to workers and handlers.

EPA proposes to eliminate the automatic authorization of certified applicators and WPS handlers to train workers. Although certified applicators have demonstrated competency in pesticide application and safety, they may not possess skills as trainers, particularly for low-literacy, non-English speaking, adult audiences. Handlers may possess pesticide safety knowledge and may have cultural and language abilities in common with workers, but they may lack teaching skills or sufficient technical knowledge needed to effectively convey the information. For training to make the most impact, trainers need to be competent not only in their knowledge of pesticide risks but also in communicating with adult learners with educational challenges. Trainers may have difficulty conveying the abstract concept of pesticide risk, due to barriers such as the limited English language skills, cultural differences, and low educational levels of many workers and handlers. EPA believes that there are sufficient qualified trainers to meet the proposed requirements now, as opposed to when the 1992 WPS was implemented, based on trainers qualified by AFOP initiatives and the publication and dissemination of an EPA train-the-trainer handbook.

EPA proposes to retain the option for certified applicators to train handlers. While the Agency has some concern regarding the ability of certified applicators to provide effective training for workers because worker trainers need to have specific capability to deliver basic information to an audience that may have a low education level and limited literacy and English skills, EPA thinks this group can be successful as trainers for handlers. There is a large overlap between the roles of applicators and handlers, which allows applicators to draw on their personal knowledge and skills needed to correctly and safely perform handler tasks. In addition, in the revisions to part 171, EPA is proposing to require certified applicators to provide training that mirrors the WPS handler training to noncertified applicators applying RUPs under their direct supervision. EPA believes that the certified applicators are appropriately qualified to convey the proper pesticide application techniques and importance of protecting oneself from pesticide exposure to handlers that will be performing similar tasks in areas that have been treated with pesticides.

EPA believes that increasing the qualifications of trainers will increase the value of training sessions by improving the quality of the training. Workers will benefit by improved understanding of the learning objectives and an increased ability to protect themselves and their families.

To ease implementation and ensure a sufficient cadre of qualified trainers is available, EPA proposes to continue allowing certified applicators to conduct worker training until two years following the effective date of the final rule. This transition period would allow time for applicators and other persons that do not meet the current requirements and who wish to conduct worker training to qualify as trainers under the proposed requirements, either by attending an EPA-approved train-the-trainer program or seeking designation as an approved trainer of workers from EPA or the state or tribe, and for all trainers to become familiar with new training materials developed as a result of the finalized rule.

EPA plans to support the development of training materials for workers and handlers that reflect the

new training requirements such as manuals and videos. EPA will work with stakeholders to develop these materials when the amendments to the rule are finalized and plans to have them ready for distribution when the revised training requirements go into effect.

The proposed regulatory text concerning trainer qualifications for workers and handlers appears in §§ 170.101(c)(4) and 170.201(c)(4) respectively of the proposed rule.

5. *Costs.* EPA estimates the cost of revising the standards for worker trainers would be $1.1 million annually, or about $3 per agricultural establishment. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the precise benefits associated with this proposal; however, EPA believes requiring trainers to have the ability to convey the pesticide safety information, along with knowledge of adult education principles and how to communicate with low-literacy audiences, would increase overall understanding and retention of the pesticide safety training by workers. This improvement would increase the likelihood that workers and handlers adopt the principles outlined in the pesticide safety training and reduce the potential for exposure to themselves and their family members.

6. *Alternative options considered but not proposed.* EPA considered several options regarding categories of qualified trainers. One option considered by the Agency was to continue to consider applicators certified under 40 CFR part 171 and handlers as qualified to train workers. EPA does not think, however, that a certified applicator's knowledge of pesticide safety and application principles alone is sufficient to qualify the certified applicator as an educator for basic safety principles for workers. As discussed above, teaching an adult population, especially individuals with low-literacy skills, differing cultural norms, and a variety of primary languages, requires trainers with skills in reaching this type of audience. After considering this alternative in light of the demographics of workers and the importance of providing safety information in manner workers can understand, EPA does not consider it reasonable to assume that certified applicators and handlers necessarily have the adult education skills to adequately perform WPS training for workers. Certified applicators and handlers may become trainers if they complete a train-the-trainer course or are designated as trainers by the EPA or a state or tribal agency.

EPA also considered an option to restrict trainer eligibility to only trainers who have completed a train-the-trainer program. The Agency believes that allowing trainers of applicators and those having completed a train-the-trainer course to train workers, as well as allowing certified applicators to train handlers, will offer continued flexibility for agriculture and result in less burden than restricting the qualifications to a single type of trainer. EPA has confidence that trainers designated as qualified by EPA or the states or tribes would have knowledge of adult education and the safety principles that workers need to know. Requiring all worker and handler trainers to complete a train-the-trainer program would limit the number of eligible trainers and as a result there might not be sufficient numbers to meet employers' training needs.

EPA also considered implementing a test to determine the eligibility of trainers. Though examination would provide a method of evaluating knowledge, safety educators and advocate groups maintained that trainers need skills that cannot readily be assessed by an examination. For example, it would be difficult to assess, through an exam, whether a person has skills in communicating with low-literacy, adult audiences. EPA believes that train-the-trainer courses in which trainers learn and practice interactive and engaging training techniques, in addition to the necessary pesticide safety information, would be more effective than a written exam to prepare educators for an audience of workers and handlers.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are there other programs that would prepare trainers to convey pesticide safety information to workers and handlers? Please describe the program and the feasibility of its implementation for affected establishments.
- Should EPA consider requiring trainers of workers and handlers to refresh their qualifications periodically, such as requiring attending a train-the-trainer program every 5 years? Please provide data in support or opposition.
- The current rule requires employers to ensure that the workers and handlers receive information in a manner they understand. Are there any issues with the current requirement for trainers? If so, please describe and provide data to support this position.

*E. Expand the Content of Worker and Handler Pesticide Safety Training*

1. *Overview.* The WPS currently requires employers to provide pesticide safety training covering specific content to workers and handlers. EPA proposes to expand the information required to be covered in worker and handler pesticide safety training so that workers and handlers can better protect themselves from adverse effects of pesticide exposures.

Additional content in worker pesticide safety training would include, among other things, information on: how to reduce pesticide take-home exposure, the requirements for early-entry notification, the requirement for emergency assistance for workers, and the availability of hazard communication materials for workers, and informing workers of the obligations of agricultural employers and what workers can expect.

Additional content in handler pesticide safety training would include the handlers' requirement to cease application if he or she observes a person other than another trained and properly equipped handler in the area under treatment or entry restricted area, and a requirement for OSHA-equivalent training on respirator use, fit-testing of respirators, and medical evaluation for respirator users.

EPA expects this additional information provided in the proposed expansions to worker and handler pesticide safety training to better protect workers and handlers from risks associated with pesticides.

2. *Existing WPS regulations.* Under 40 CFR 170.130(d)(4), worker pesticide safety training must include, at a minimum, the following 11 basic safety training points:

- Where and in what form pesticides may be encountered during work activities.
- Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.
- Routes through which pesticides can enter the body.
- Signs and symptoms of common types of pesticide poisoning.
- Emergency first aid for pesticide injuries or poisonings.
- How to obtain emergency medical care.
- Routine and emergency decontamination procedures, including emergency eye flushing techniques.
- Hazards from chemigation and drift.
- Hazards from pesticide residues on clothing.
- Warnings about taking pesticides or pesticide containers home.

• Requirements of the WPS designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

Under 40 CFR 170.230(c)(4), handler pesticide safety training must include, at a minimum, the following 13 basic safety training points:

• Format and meaning of information on the product label, including safety information.
• Hazards of pesticides from toxicity and exposure.
• Routes through which pesticides can enter the body.
• Signs and symptoms of pesticide poisoning.
• Emergency first aid for pesticide poisoning.
• How to get emergency medical care.
• Routine and emergency decontamination procedures.
• Personal Protective Equipment (PPE).
• Heat-related illness issues.
• Safety requirements for handling, transporting, storing, and disposing of pesticides.
• Environmental concerns.
• Warnings about taking pesticides or pesticide containers home.
• Training on the requirements of the regulation related to handling.

3. *Summary of the issues.* The stakeholder engagement process produced many comments on the content of pesticide safety training for workers and handlers. [See Unit V.B.] Recommendations to improve worker pesticide safety training in the ''Report on the National Assessment of EPA's Pesticide Worker Safety Program'' included adding elements to training on potential sources of pesticide exposure and preventing family exposure, such as specific information on the need to wash work clothes separately from other clothing (Ref. 17) (Ref. 15). Additionally, farmworker organizations support expansion of the worker pesticide safety training to include general information about pesticide hazards, ways to reduce take-home exposure, and worker rights. In contrast, other stakeholders raised concerns for extending the length of training, increasing the burden on employers, or making the training tedious for workers who may not be paid for time spent in training. Many stakeholders also requested that EPA be mindful when revising the WPS of the burdens faced by workers and some handlers, due to their low income, low literacy, and limited English language skills.

4. *Details of the proposal/rationale.* EPA is proposing a number of new provisions to be included in the content for worker and handler safety training. Each of these is discussed in greater detail in this section. Where some proposed changes only clarify or enhance an existing training topic, rather than substantially altering the content of the topic, EPA does not discuss the proposed modifications in as great detail as the proposed modifications to existing language that substantially alter the content of the training topic.

EPA proposes to add the following topics to both worker and handler training: protection from pesticide take-home exposure, enhanced emergency assistance provisions in the WPS, and the availability of hazard communication materials.

Additional worker safety training topics would add about 15 minutes to the training and would include, in addition to the points in the current WPS: Handler tasks that employers must not direct or allow workers to do, early-entry notification requirements including age restrictions, hazards of pesticide exposure to children and pregnant women, how to report suspected violations, and the prohibition of employer retaliation for reporting suspected violations or attempting to comply with 40 CFR part 170.

The proposed revised regulation for worker training at § 170.101(c)(2) through (3) would require the following training content:

• Agricultural employers' obligation to provide workers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing pesticide safety training, pesticide safety and application information, decontamination supplies, and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas.
• How to recognize and understand the meaning of the warning sign used for notifying workers of restrictions on entering pesticide treated areas on the establishment.
• How to follow directions and/or signs about keeping out of entry restricted or pesticide treated areas.
• Where and in what form pesticides may be encountered during work activities and potential sources of pesticide exposure on the agricultural establishment. This includes pesticides drifting from nearby applications, and that pesticide residues may be on or in plants, soil, irrigation water, tractors, application equipment, or used personal protective equipment.
• Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.
• Potential hazards from chemigation and drift.
• Routes through which pesticides can enter the body.
• Signs and symptoms of common types of pesticide poisoning.
• Emergency first aid for pesticide injuries or poisonings.
• Routine and emergency decontamination procedures, including emergency eye flushing techniques.
• Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body and as soon as possible, shower, shampoo hair, and change into clean clothes.
• How and when to obtain emergency medical care.
• When working near pesticides or in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
• Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working near or in pesticide treated areas.
• Potential hazards from pesticide residues on clothing.
• Wash work clothes before wearing again.
• Wash work clothes separately from other clothes.
• Do not take pesticides or pesticide containers used at work to your home.
• Agricultural employers are required to provide workers with pesticide hazard information.
• Agricultural employers must not allow or direct any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.
• There are minimum age restrictions and notification requirements for early-entry activities.
• Potential hazards to children and pregnant women from pesticide exposure.
• Keep children and nonworking family members away from pesticide treated areas.
• Remove work boots or shoes before entering home.
• After working near pesticides or in pesticide treated areas, remove work clothes and wash or shower before physical contact with children or family members.

• How to report suspected pesticide use violations to the state or tribal agency responsible for pesticide enforcement.

• Agricultural employers are prohibited from intimidating, threatening, coercing, or discriminating against any worker for the purposes of interfering with any attempt to comply with the requirements of this part, or because the worker has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this part.

Additional handler training topics would add about 15 minutes to the existing training and would include: proper removal of PPE; the requirement for handlers to cease application if persons are in the treated area or entry restricted area; the requirement that handler employers must ensure handlers have received respirator fit-testing, training, and medical evaluation if required to wear a respirator; and the minimum age requirement for handlers.

The proposed revised regulation for handler training at § 170.201(c)(2) through (3) would require the following training content:

• Employers' obligation to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing pesticide safety training, pesticide safety and application information, decontamination supplies, and emergency medical assistance, and notifying handlers of restrictions during applications and on entering pesticide treated areas.

• How to recognize and understand the meaning of the warning sign used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

• How to follow directions and/or signs about keeping out of entry restricted or pesticide treated areas.

• Where and in what form pesticides may be encountered during work activities and potential sources of pesticide exposure on the agricultural establishment. This includes pesticides drifting from nearby applications, and that pesticide residues may be on or in plants, soil, irrigation water, tractors, application equipment, or used personal protective equipment.

• Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

• Potential hazards from chemigation and drift.

• Routes through which pesticides can enter the body.

• Signs and symptoms of common types of pesticide poisoning.

• Emergency first aid for pesticide injuries or poisonings.

• Routine and emergency decontamination procedures, including emergency eye flushing techniques.

• Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body and as soon as possible, shower, shampoo hair, and change into clean clothes.

• How and when to obtain emergency medical care.

• When working near pesticides or in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

• Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working near or in pesticide treated areas.

• Potential hazards from pesticide residues on clothing.

• Wash work clothes before wearing again.

• Wash work clothes separately from other clothes.

• Do not take pesticides or pesticide containers used at work to your home.

• Agricultural employers are required to provide handlers with pesticide hazard information.

• Agricultural employers must not allow or direct any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

• Early-entry workers must be at least 16 years of age to perform early-entry activities and workers must receive notification prior to conducting early-entry activities.

• Potential hazards to children and pregnant women from pesticide exposure.

• Keep children and nonworking family members away from pesticide treated areas.

• Remove work boots or shoes before entering home.

• After working near pesticides or in pesticide treated areas, remove work clothes and wash or shower before physical contact with children or family members.

• How to report suspected pesticide use violations to the state or tribal agency responsible for pesticide enforcement.

• Employers are prohibited from intimidating, threatening, coercing, or discriminating against any handler for the purposes of interfering with any attempt to comply with the requirements of this part, or because the worker has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this part.

• Information on proper application and use of pesticides.

• Requirement for handlers to follow all pesticide label directions.

• Format and meaning of all information contained on pesticide labels and in labeling.

• Need for and appropriate use and removal of all personal protective equipment.

• How to recognize, prevent, and provide first aid treatment for heat-related illness.

• Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

• Environmental concerns, such as drift, runoff, and wildlife hazards.

• Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

• Handler employers are required to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

• Handlers must cease or suspend a pesticide application if workers or other persons are in the treated area or the entry-restricted area.

• Handlers must be at least 16 years of age.

• Handler employers must ensure handlers have received respirator fit-testing, training, and medical evaluation if they are required to wear a respirator.

• Handler employers must post treated areas as required by this rule.

i. *Protection from Pesticide Take-Home Exposure.* Although the current training instructs workers and handlers not to take home pesticide containers and that clothing can carry pesticide residue, the Agency proposes to expand the existing sections to include more specific information in the worker and handler pesticide safety training on ways to reduce take-home pesticide exposure. Specifically, the expanded training content would include the following: Instructions on washing before touching family members, removing soiled work boots or shoes before entering the home, washing clothes that may have pesticide residues

on them before wearing them again and separately from other family clothes, and keeping family members away from treated areas, as well as information on the potential risks to children and pregnant women from pesticide exposure.

Workers and handlers may be exposed to pesticides at work; additionally, they and their families may be exposed to pesticide residues brought into their homes from the workplace. ''Take-home'' exposure is the movement of agricultural pesticides from the workplace to the home via contact with pesticide-contaminated clothing, dirt tracked into the home, or other pathways. This type of exposure has generated concern among health care professionals and worker advocates. A 1995 study by the Centers for Disease Control (CDC) on worker's home contamination found, in multiple industries, that hazardous chemical contamination of workers' homes is a worldwide problem, resulting in injury and at times, death (Ref. 49 pp. vii, 17–19).

Although EPA does not have conclusive data about the impact of pesticide residue transfer from a worker or handler to his or her home, car, and family members, the Agency recognizes that workers and handlers are exposed to chemicals in the workplace and should be educated on minimizing the transfer of these chemicals to non-work locations. Some studies have been conducted to evaluate whether non-working children in agricultural families may have greater exposure to agricultural chemicals than children of non-agricultural families from the presence of pesticide residue in their home (Ref. 50). Contamination of the home from agricultural pesticides can come from numerous sources, including soil, dust, or other residue on clothing and vehicles and contaminated storage containers (Ref. 49) (Ref. 51). Additionally, agricultural pesticides introduced into the home may persist longer than in outdoor areas, due to the lack of degradative environmental processes, such as those furthered by rain and sun. Peer-reviewed studies have concluded that ''farmworker and all rural families must be educated about drift and how to reduce exposure'' (Ref. 52 p. 1259) (Ref. 53) and that ''pregnant farmworkers and those living with farmworkers need to be educated to reduce potential take-home pesticide exposure'' (Ref. 34 p. 491).

Studies have focused on the presence of agricultural pesticides in the homes of workers. Centers for Children's Environmental Health and Disease Prevention Research were established to explore ways to reduce children's health risks from environmental factors. The program is jointly funded by EPA and the National Institute of Environmental Health Sciences (NIEHS) and also collaborates with the Centers for Disease Control (Ref. 54). Two of the centers, the University of California at Berkeley (UC Berkeley) and the University of Washington, have a number of studies which focus on agricultural pesticides and children, some with a primary outcome of pesticide exposure reduction strategies. The Center for the Health Assessment of Mother and Children of Salinas (CHAMACOS) Study, a longitudinal birth cohort study of children in the Salinas Valley, California, is the largest study administered by UC Berkeley's Children's Center (Ref. 55). California Department of Health Services tested dust in worker and non-worker homes and concluded that there is a greater presence of pesticide residue in the homes of workers (Ref. 56). Additional studies apart from the UC Berkeley activities have also examined the transfer of pesticide residues from pesticide-treated areas to the home and automobiles, i.e., the take-home pathway (Ref. 23) (Ref. 50) (Ref. 51) (Ref. 57) (Ref. 58).

Effective methods of reducing take-home exposure exist. CDC's 1995 study identified worksite behaviors, such as minimizing workplace exposures, storing clean clothes in uncontaminated areas of the worksite, changing work clothes prior to returning home, and showering before leaving the workplace, that are effective means to reduce take-home exposure (Ref. 49). The report also identified methods in the home to reduce contamination, such as laundering work clothes separately from family laundry, preventing family members from visiting the workplace, and informing the workers of risks to family members and how to minimize their exposure. Workers and their families should be familiar with how behaviors such as hand washing, proper laundering, and removing work clothes before entering the home can reduce risk of exposure (Ref. 34).

*ii. Training on Reporting Violations and Employer Retaliation Prohibition*

EPA proposes to require that worker and handler pesticide safety training include information on how to report suspected pesticide use violations. EPA also proposes to include a training point explaining that agricultural employers are prohibited from retaliation against workers and handlers for attempting to comply with the WPS or reporting suspected violation of the WPS. Including this information in the worker and handler training would increase the effectiveness of the existing WPS protections against retaliations.

Under the current 40 CFR 170.7(b) employers are prohibited from taking ''any retaliatory action for attempts to comply with this part or any action having the effect of preventing or discouraging any worker or handler from complying or attempting to comply with any requirement of this part.'' The existing § 170.130(d)(4)(xi) requires employers to provide training on protections against retaliatory acts. Similar protection against retaliation for handlers is covered in § 170.230(c)(4)(xiii).

Farmworker advocacy organizations recommend including in the worker and handler pesticide safety training information on the rights of workers and handlers under the WPS (Ref. 36). The Agency agrees that workers and handlers should be aware of WPS provisions on how to report violations and the prohibition on retaliation by the agricultural employer. Farmworker advocacy organizations indicate that workers and handlers informed of their employers' requirements and the process to report violations and pesticide exposure incidents are more likely to report them. This can lead to a clearer understanding of circumstances leading to WPS violations and pesticide exposure issues by enforcement.

EPA believes it is important for workers and handlers to understand that the WPS provides protections for their safety and that if their employers do not provide the required protections, the government can assist them. By incorporating this information into the WPS training, it is more likely that workers and handlers will understand the information and be aware of the resources available to them in the event of a suspected act of retaliation or noncompliance with the WPS.

Farmworker organizations requested that WPS worker and handler training include contact information for legal representation (Ref. 35). EPA, however, does not agree. EPA does not consider it appropriate to recommend particular attorneys or legal representatives. Moreover, while legal representation may be helpful for a worker or handler who experiences retaliation or a serious pesticide exposure, it is not clear that requiring the requested notification would significantly contribute to the goals of FIFRA.

The proposed regulatory text concerning training in regard to reporting suspected violations and employer prohibition against retaliation

appears in §§ 170.101(c)(3)(viii) through (ix) and 170.201(c)(3)(v) of the proposed rule.

iii. *Training on Hazard Communications Materials for Workers and Handlers.* EPA proposes to require agricultural and handler employers to provide workers and handlers with access to the expanded pesticide application information, the SDS, and the pesticide product labeling upon request for up to two years. [See Unit IX.] EPA proposes to include an overview of the new hazard communication requirements and materials (expanded application information, SDS, and product labeling) in the pesticide safety trainings for workers and handlers.

The proposed regulatory text concerning hazard communication content of worker and handler pesticide safety training appears in §§ 170.101(c)(3)(i) and 170.201(c)(3)(v) of the proposed rule.

iv. *Training on Early-Entry Notification for Workers.* EPA is proposing to add to the worker pesticide safety training points about the minimum age restriction and notification requirements for early-entry work. Workers would learn that entry into a treated area under an REI would be limited to workers 16 years of age or older and what notification requirements must be provided prior to being directed to perform early-entry tasks. EPA expects that providing this information to workers during training would make workers aware of their agricultural employer's obligation to provide information on the protections required when asked to perform early-entry work. EPA believes that workers should be made aware of employer obligations in their training so they will understand the significance of (and, if they fail to receive it, notice the absence of) the information employers would be required to provide. For a complete discussion of the proposed amendments to the early-entry requirements, see Unit XII. The proposed regulatory text concerning early-entry notification and minimum age content of worker and handler pesticide safety training appears in §§ 170.101(c)(3)(iii) and 170.201(c)(3)(v) of the proposed rule.

v. *Handler Responsibilities.* EPA proposes that a handler be required to cease application if the handler observes a person other than another trained and properly equipped handler in the area under treatment or associated entry-restricted area. EPA believes that either the handler would have prior knowledge that another handler would be in the area during treatment, or would cease application until he or she could verify whether the person(s) in the treated area met the standard as a trained and properly equipped handler. This new requirement would impose additional responsibility on handlers. [See Unit XI.] Therefore, EPA proposes to add to the handler training requirements a point on this specific handler responsibility.

The proposed regulatory text concerning the cessation of application content of handler pesticide safety training appears in § 170.201(c)(3)(i) of the proposed rule.

vi. *Respirator Fit-Testing and Medical Evaluation for Handlers.* Unit XVI.E. discusses EPA's proposal to adopt the OSHA standard (29 CFR part 1910) for respirator use. The OSHA standard requires employers and users to take steps to ensure respirators are used safely, including fit testing the handler's respirator, conducting medical evaluation, and training handlers on proper respirator use.

EPA proposes to require that handler training inform handlers of the new obligations of handler employers regarding proper respirator use. Handler training content is proposed to inform handlers that their employer must ensure they have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator; only those handlers who would use a respirator would need to receive the full OSHA training on respirators. EPA expects this change would inform handlers of the new requirements for respirator use and their importance.

The proposed regulatory text concerning adding to the training the employer's responsibility to provide handlers using respirators with respirator training, fit-testing, and medical evaluation appears in § 170.201(c)(3)(iii) of the proposed rule.

5. *Costs.* The proposed expansions to training content would expand worker training from approximately 30 minutes to 45 minutes, and handler training from 45 minutes to 60 minutes. The Agency believes that the expanded training is necessary for workers and handlers to better protect themselves.

EPA estimates the cost of expanding pesticide safety training for workers would be $4.3 million annually or about $11 per agricultural establishment per year. The cost to expand pesticide safety training for handlers would be $660,000 annually, or about $3 per agricultural establishment and $15 per commercial pesticide handling establishment per year. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the specific benefits associated with this proposal. However, EPA believes that adding information to worker and handler training would assist workers and handlers to mitigate pesticide exposure to themselves and their families. EPA believes this would result in a lower number of occupation-related pesticide exposures and reduce chronic and developmental effects from pesticide exposure.

6. *Alternate options considered but not proposed.* EPA considered various combinations of the additional training content discussed above. For example, EPA considered simply clarifying the training required under the current rule to be more specific about the information to be covered. EPA also considered not adding the information about employers' responsibilities to provide training to early-entry workers and to handlers using respirators in order to shorten the total duration of a training program; however, given the importance of communicating the additional information to workers and handlers to ensure they have the information necessary to protect themselves and their families from pesticide exposure and the relatively low burden associated with extending the training to cover the content, EPA believes that all of the aforementioned points should be added to the training.

While a shorter training program with fewer points would reduce the cost of the proposal slightly, EPA believes the benefits of providing the proposed additional training topics to workers and handlers are reasonably balanced against the cost.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are there any training points listed above that EPA should consider not including in the final proposal? If so, which points and why?
- Are there points that EPA should consider adding to the training content? If so, what points should be added? Please provide a rationale for why the additional content would benefit workers and/or handlers.

*F. Retain Audiovisual Presentations as Permissible Methods for Pesticide Safety Training*

1. *Overview.* The existing WPS allows trainers to train workers and handlers using a variety of methods, including an EPA-approved video or DVD. EPA recognizes concerns raised by stakeholders that the video/DVD may not be an adequate training tool when

used as a stand-alone training, but EPA has decided to retain the video as a training method and to add requirements for the trainer to be present throughout the presentation, to answer all questions from those participating in the training, and to ensure that the training is reasonably free of distractions.

2. *Existing WPS regulations.* The WPS requires trainers to present the pesticide safety information ''either orally from written materials or audiovisually'' (40 CFR 170.130(d)(1) and 170.230(c)(1)). EPA developed a variety of training materials, including training videos covering the pesticide safety points specified in 40 CFR 170.130 and 170.230. A worker training video, ''Chasing the Sun Pesticide Safety Training'' runs for approximately 30 minutes, and a handler training video, ''Pesticide Handlers and the WPS'' runs for approximately 50 minutes. Each video covers the current training points and both are available in English and Spanish.

3. *Summary of the issues.* Farmworker organizations have voiced opposition to maintaining a video as the training device (Ref. 35), instead recommending that EPA require employers to provide training using methods with greater interaction to better communicate with workers (Ref. 36). A report from EPA's National Assessment of the Worker Protection Program recommended that training materials encourage interaction and participation, and be both culturally and linguistically appropriate (Ref. 15).

The Agency recognizes the passive nature of video training and understands that some stakeholders believe that a lack of worker or handler engagement during video training may prevent effective transmission of pesticide safety information. Focus-group research, however, indicates that workers prefer to receive training information in a video or provided orally along with simple drawings on paper as visual aids rather than an oral presentation without any visual aids (Ref. 40). Additionally, research has shown that comprehension of pictorials for safety-related information is significantly enhanced when accompanied by even brief trainer involvement (Ref. 59).

4. *Details of the proposal/rationale.* EPA proposes to continue to allow audiovisual training tools, and to add requirements for the trainer to be present during the training, to answer questions from trainees, and to ensure that the training is reasonably free from distractions. [See Unit VII.D.] Combined with more qualified trainers familiar with the principles of adult education, EPA expects that use of EPA-approved video would enhance, rather than diminish, comprehension of training objectives.

Based on feedback received directly from the affected community of workers, EPA decided to retain the option for trainers to use audiovisual materials, including but not limited to videos, DVDs, and PowerPoint presentations, as part of the training program. EPA believes that allowing use of audiovisual training tools provides flexibility to trainers and employers by allowing them to be present to monitor the audience, to stimulate discussion, and to answer questions, while the video presents the major concepts of the training. This would help small establishments that conduct infrequent trainings to ensure that the training covers all of the major points. In addition, EPA recognizes that some employers and trainers are more comfortable utilizing audiovisual materials as part of training because widely used videos employ actors portraying workers to communicate the messages, which can be more convincing to the training audience.

The proposed regulatory text requiring the trainer to be present throughout the training for workers and handlers appears in §§ 170.101(c)(1) and 170.201(c)(1), respectively, of the proposed rule.

5. *Costs and benefits.* EPA does not estimate any costs associated with this proposal because it retains an existing provision of the rule.

6. *Alternate options considered but not proposed.* EPA considered eliminating the option for trainers to present material audio visually. Based on the rationales discussed above, EPA believes that allowing trainers to use audiovisual training materials and adding a requirement for the trainer to be present and answer workers and handlers' questions would adequately address the concerns raised by farmworker groups while allowing trainer's flexibility in how they communicate with workers and handlers.

7. *Request for comment.* EPA specifically requests comment on the following question:

- Please provide any additional information on the efficacy of different methods used to conduct worker and handler training.

### *G. Eliminate Exception to Handler Training Requirements*

1. *Overview.* Currently, an employer does not have to provide handler training to a person performing handler tasks if the handler has satisfied the training requirements under the Certification of Pesticide Applicators Regulation (40 CFR part 171). In order to ensure handlers receive the information necessary to understand WPS protections, EPA proposes to eliminate this exception. EPA expects removal of this exception would ensure all handlers receive complete information to protect themselves in situations specific to WPS establishments.

2. *Existing WPS regulations.* Under 40 CFR 170.230, pesticide handlers currently are required to be trained on pesticide safety. Under 40 CFR 170.230(b)(2), employers may be excepted from the requirement to provide handler training when their handlers have satisfied the training requirements in 40 CFR 171. Part 171, however, does not include specific training requirements relevant to WPS; therefore, the exception allows handlers to qualify without learning about part 170 requirements, such as REIs and the prohibition against spraying when anyone is in the treated area.

3. *Details of the proposal/rationale.* EPA proposes to eliminate the exception for handler training for a handler who has been trained in accordance with the requirements in 40 CFR part 171. In essence, this change would require persons who apply pesticides under the direct supervision of a certified applicator to receive handler training under the WPS. As explained in Unit II, the Agency is considering separate revisions to 40 CFR part 171 that could include specific training requirements for persons applying RUPs under the supervision of a certified applicator. Although the training requirements in these two proposed rules overlap substantially (e.g., safe application techniques, understanding label requirements, safe storage and disposal), the training EPA is considering to require under 40 CFR part 171 does not include specific information on WPS requirements, handler responsibilities, and reducing take-home exposure specifically in agriculture. WPS information is critical for handlers so they can protect themselves, their families, workers, the environment, and bystanders.

4. *Alternative options considered but not proposed.* While EPA considered proposing identical training requirements for both § 170.201 and part 171, many RUP users never apply agricultural pesticides, and would not need to know all the detailed requirements related to the WPS protections, such as warning sign postings and specific handler responsibilities. EPA believes the WPS-

specific information is critical to equip a handler to avoid risk of exposure and illness in agricultural situations. Therefore, the Agency does not intend to impose the same training requirements for noncertified applicators under 40 CFR part 171.

5. *Cost.* EPA believes the cost for this requirement would be negligible. Those employers that intend to provide training under 40 CFR part 171 for their handler employees would be able provide the proposed WPS handler training and satisfy the requirements of both regulations. The estimated training burden for the two requirements is substantially similar.

6. *Request for comment.* EPA requests feedback on the following:

- Should the proposed training under 40 CFR part 171 include a requirement for expanded training on the WPS?
- How would the benefits to employers from giving a single training that would apply to both WPS handlers and applicators using RUPs under the direct supervision of a certified applicator compare to the costs of requiring agricultural applicator training for all applicators using RUPs under the direct supervision of a certified applicator?

## VIII. Notifications to Workers and Handlers

### *A. Posted Notification Timing & Oral Notification*

1. *Overview.* The current rule allows employers to provide to workers either oral or posted warnings about areas where an REI (regardless of its length) has been in effect within the last 30 days unless required to provide both oral and posted warnings by the specific pesticide label. For farms, forests, and non-enclosed nurseries (what EPA is proposing to define as ''outdoor production''), EPA proposes to require that agricultural employers post warning signs regarding the application of a pesticide that has an REI greater than 48 hours, and proposes to allow the option of oral warning or posted notification for products with REIs of 48 hours or less. For greenhouses and indoor nurseries (what EPA is proposing to define as ''enclosed space production''), EPA proposes to require that agricultural employers post warning signs according to the current posted warning requirements when the product applied has an REI greater than 4 hours, and proposes to allow the option for oral or posted notification where the product applied has an REI of 4 hours or less. EPA expects the changes to improve worker protection by increasing workers' awareness of treated areas and reminding them to take required precautions and to avoid pesticide exposure, leading to an overall reduction in occupational pesticide-related illnesses.

2. *Existing WPS regulations.* Under 40 CFR 170.120, agricultural employers are required to notify workers about pesticide applications and areas on the agricultural establishment subject to an REI. Notification is required when workers or handlers are on the establishment during application or the REI and will pass within one quarter (1/4) mile of the treated area. In greenhouses and some enclosed nurseries, the agricultural employer must post warning signs. On farms, and in forests and non-enclosed nurseries, the agricultural employer may choose either to post warning signs at the usual points of entry around the treated area or to notify workers orally about applications that will take place on the establishment. Both posted and oral worker notification must inform workers about the location of the application and treated areas under REIs so workers do not enter. In cases where the product labeling requires both written and oral notification of workers, the WPS also requires this ''double notification.'' Part 170 does not currently require the agricultural employer to keep a record of oral warnings.

3. *Summary of the issues.* In 2006, Farmworker Justice sent a letter to the EPA Administrator, signed by more than 50 different farmworker groups, suggesting revisions for making the WPS more protective. The letter states, ''Restricted-entry intervals (REIs) are . . . intended to provide a physical barrier, reducing worker exposure to pesticides when and where the risk is greatest. But workers are not effectively warned to keep out of recently treated areas.'' (Ref. 35) Farmworker organizations noted three problems with the current requirement: Workers may not remember REI details that span multiple days, oral warnings may not be adequately provided by the employer in the appropriate language or understood and retained by the worker, and compliance with the oral warning requirement is difficult to verify. Farmworker Justice recommended posting areas treated with a pesticide with an REI longer than 72 hours and requiring recordkeeping of oral notifications to workers.

The Farmworker Justice comments are consistent with research showing that oral instruction alone may not be an effective method of safety instruction.

4. *Details of the proposal/rationale.* For ''outdoor production,'' EPA proposes to require that agricultural employers post warning signs where the pesticide to be applied has an REI greater than 48 hours, and to allow the option of oral warning or posted notification for products with an REI of 48 hours or less. For ''enclosed space production,'' EPA proposes to require posting of warning signs where the product applied has an REI greater than 4 hours, and to allow the option of oral warning or posted notification for products with an REI of 4 hours or less.

EPA believes that under the current rule agricultural employers most commonly opt to provide oral notification to their workers because this is less costly and less burdensome than physically posting treated areas. However, workers may not recall oral notifications when REIs are longer than a few days. Adults remember only about 10% of what they hear, but when the information is seen and heard retention improves to about 50% (Ref. 41). Entry into a treated area during an REI presents an elevated risk of pesticide exposure and EPA believes that ensuring that workers are adequately notified of treated areas in a manner they can recall and understand would result in fewer entries into treated areas during the REI without appropriate protection.

A 2008 SENSOR-Pesticides/California Department of Pesticide Regulation publication cites reentry into pesticide-treated areas prior to the end of the REI as the second leading factor contributing to reports of acute occupational pesticide poisoning cases in agricultural workers (Ref. 11). One reason workers may be entering pesticide-treated areas is their lack of awareness that the area has been treated with a pesticide and is under an REI, which EPA believes can be addressed by more robust posting of treated areas.

Because workers face challenges with literacy and understanding English, EPA believes that reducing the reliance on spoken messages to protect workers and increasing reliance on a clear, graphic, posted warning would better protect workers from the risks of entering a treated area before the REI expires without proper protection. The posted warning signs will serve as physical reminders for workers to avoid areas in which the REI has not expired. During pesticide safety training, workers would be informed of the requirement for agricultural employers to provide oral or posted notification for treated areas, in addition to the current requirement to describe the warning signs, which would increase workers' likelihood of noticing and complying with entry restriction signs. [See Unit VII.E.]

Treated areas under an REI pose elevated risk of exposure; thus, by keeping workers out, negative health effects of pesticide exposure may be avoided. EPA expects the proposed requirement to increase the number of areas posted on agricultural establishments across the nation, thereby increasing the number of workers who are aware of the REI and avoid entering, and ultimately leading to a reduction of incidence of pesticide illnesses related to unintentional entry into treated areas under an REI.

The protective effect of increased posting requirements through subsequent reduction of pesticide illnesses has been shown in Monterey County, California. In response to a series of worker exposure incidents, Monterey County required agricultural employers to post areas treated with a pesticide with an REI of 24 hours or longer. Since its implementation, this county-specific requirement has led to a significant reduction in pesticide-related illnesses caused by entering a treated area before the expiration of an REI (Ref. 60). California cannot provide specific data on the percent reduction, but a 2001 report from the California Department of Pesticide Regulation noted stakeholder consensus on and support for the requirement, stating: ''All participants strongly believe that field posting prevents workers from early reentry. Monterey County participants support their 24-hour posting regulations, even though compliance is costly, because field posting prevents both application and reentry errors'' (Ref. 60).

EPA believes the proposed posting requirement may also foster compliance and facilitate enforcement because WPS inspectors could readily view posted warning signs. Inspectors who see workers in a treated area while the posted warning signs were displayed could investigate whether the workers received proper early entry protections.

EPA believes posting all treated areas would be a very effective method for ensuring that workers are notified about what areas are under an REI. However, the burden on employers to post all treated areas subject to an REI would be substantial. To treat an area with an REI of 24 hours, the employer would have to post the area, make the treatment, and retrieve the signs the following day. EPA believes that it is reasonable to expect workers to remember oral warnings related to treated areas under REIs for at most 2 work days, or about 48 hours.

EPA is proposing to allow oral or posted warnings for areas in greenhouses treated with an REI of 4 hours or less. Greenhouse production is much more compact than outdoor production. In a row of planting tables, there could be many applications. EPA recognizes the need for workers to have information about the different risks they face; however, EPA also believes that products with an REI of 4 hours or less generally pose lower risks than products with longer REIs.

As noted, EPA believes that workers can retain warning information provided orally for up to 48 hours. However, greenhouses and other enclosed space production establishments have significantly more applications in a smaller space. EPA believes it is unreasonable to expect workers to remember all of the information provided orally about treated areas when each different planting tray could have different requirements, therefore EPA is proposing a lower threshold for posting notification of treated areas on establishments where multiple applications may be conducted in a small area. EPA believes allowing employers the option to provide oral or posted notification of treated areas for a small subset of pesticides provides employers with flexibility while ensuring workers receive the information necessary to protect themselves.

The proposed regulatory text concerning notification appears in the following sections of the proposed rule: outdoor production—§ 170.109(a)(1)(i) and enclosed space production—§ 170.109(a)(1)(ii).

5. *Costs and benefits.* EPA estimates the cost of requiring employers to post all treated areas with an REI longer than 48 hours would be $11.1 million annually, or about $28 per establishment per year. EPA estimates that the proposed changes to notification in greenhouses would save about $10,000 per year, or $14 per small greenhouse. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the benefits associated with this specific proposal; however, EPA believes requiring employers to post treated areas under an REI of greater than 48 hours would provide workers with more reliable information on treated areas and when to stay out. EPA expects this would result in fewer workers entering treated areas under an REI and therefore reduce the number of pesticide-related illnesses attributable to this cause.

6. *Alternative options considered but not proposed.*—i. *Alternatives to Posting Timeframe.* EPA considered the Farmworker Justice recommendation for EPA to require posted warning signs in treated areas with REIs greater than 72 hours. This option would provide more protection than the current regulation, but not as much as the proposed option which would require the same posting, but for REIs greater than 48 hours. Given the importance to the worker of understanding which areas are under an REI, EPA believes that posted notification for products with REIs over 72 hours would not adequately warn workers to take precautions. EPA believes that it would be unreasonable to expect a worker to retain the information about what areas were treated and when REIs expire for longer than a two day period. EPA estimates the cost of this proposal would be about $7.9 million, or $20 per establishment.

EPA also considered requiring agricultural employers to post warning signs in treated areas with an REI of 24 hours or longer, similar to the requirement in Monterey County, California. EPA recognizes the impact of Monterey's posting requirement in reducing exposure to workers. However, EPA also recognizes the need to balance the protection of workers and burden on agricultural employers and applicators. Monterey County represents a small geographical area. EPA believes that while posting of treated areas with an REI of 24 hours or longer may have been practical in this limited region, it would not be practical as a national requirement. Agricultural employers would have a much higher burden to post every treated area with an REI of 24 hours or longer. EPA believes that workers could retain information on treated areas and REIs for up to two days.

Lastly, EPA considered a requirement to post warning signs in all treated areas under REIs for enclosed space and outdoor production. This option would ensure that workers are aware of the status of every treated area and every area without posting would be safe for workers to enter. Posting of all treated areas where an REI is in effect would send a clear message to workers; however, it would be very difficult for agricultural employers to comply with this requirement. Some products have an REI of 4 hours. In essence, an employer would post signs after application and almost immediately take them down. While this task may be easy in enclosed space production, it may be substantially more burdensome for an agricultural employer engaged in outdoor production.

EPA believes that the proposed option to require posting of all areas of outdoor production treated with a product with an REI greater than 48 hours strikes a balance between the three alternatives considered. EPA recognizes the value of allowing oral warning for worker notification of treated areas with REIs less than 48 hours because this option would provide regulatory flexibility (Ref. 18). EPA believes that workers informed orally can remember that an area has been restricted for entry for up to two days. Posting areas treated with a pesticide product with an REI greater than 48 hours would provide workers visual reminders when the REI is sufficiently long that a worker could have difficulty remembering the specific area treated or length of the REI.

ii. *Recordkeeping of Oral Notification.* To address concerns that workers may not receive oral notifications of treated areas with REIs shorter than or equal to 48 hours, EPA considered adding a requirement for agricultural employers to retain records of the oral warning provided, signed by the workers who received the notification, for 2 years. The required record would contain:

- Location and description of the entry-restricted area and the treated area;
- Date and time the REI starts and ends;
- Date and time the agricultural employer provided the oral warning;
- Name and signature of the person providing the warning; and
- Name and signature of each employee that received notification.

Requiring the employee's signature on the record would provide incentive to the employer to provide the notification in a manner the worker understands in order to obtain the signature. This requirement would impose significant burden on employers. The time required to comply with the recordkeeping would substantially increase the time currently required to provide the oral notification, based on the additional requirement to explain the notification record and secure the signatures of all workers entering or working within 1/4 mile of the treated area.

In addition, workers may have difficulty reading and understanding the record of the notification because many are not literate in English. Workers may sign the notification record because instructed to do so by the employer, not because they understand the information provided and intent of the record of the oral notification, undermining the intent of the record as confirmation of transfer of information to workers.

EPA estimates the cost to collect and retain records for 2 years would be about $20 million, or about $51 per establishment. This cost is substantially higher than the cost for recordkeeping of pesticide safety training because pesticide safety training would only occur once annually per worker whereas records of oral notification could be required almost every time an application occurs. EPA has insufficient data to support a claim that the potential benefits of this alternative, i.e., increased enforceability of the WPS, would outweigh the potential burden on agricultural employers to record and maintain the information.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- For outdoor production, EPA proposes to allow the option of oral warning or posted notification for products with an REI of 48 hours or less. Is there a different time period that would better balance the costs of compliance with the expected risk reduction?
- Will the proposed requirements for posting instead of oral warnings provide sufficient benefit for workers to warrant the additional burden placed on agricultural employers?
- Should EPA require recordkeeping for oral notification? If so, why?

*B. Locations of Warning Sign*

1. *Overview.* Where the existing WPS requires a warning sign to be posted, the signs must be placed where they are visible from all usual points of worker entry to the treated area, the corners of the treated area, or an area affording maximum visibility. EPA proposes to revise the required posting locations to include locations visible from a worker housing area if the housing area is within 100 feet of a treated area for outdoor production.

2. *Existing WPS regulations.* The WPS requires employers to post warning signs (40 CFR 170.120(c)). For applications in farms, forests, and non-enclosed nurseries (what EPA is proposing to define as ''outdoor production''), the warning signs must be visible from all usual points of worker entry into the treated area, including, at a minimum, each access road, each border with a labor camp (what EPA is proposing be referred to as a ''worker housing area'') adjacent to the treated area, and each footpath or other walking route that enters the treated area. For applications in greenhouses and indoor nurseries (what EPA is proposing to define as ''enclosed space production''), the warning signs must be visible from all usual points of worker entry to the treated area, including, each aisle or other walking route that enters the treated area. When there are no usual points of worker entry to the treated area (farm, forest, nursery or greenhouse), the employer must post signs in the corners of the treated area or in any other location offering maximum visibility.

3. *Summary of the issues.* During the National Assessment process, stakeholders, including farmworker groups and healthcare organizations, raised concerns about providing notice to worker housing inhabitants when their location is not directly adjacent to the treated area (Ref. 17). Workers and their families housed near treated areas may have a higher likelihood of exposure to pesticides from inadvertently entering a treated area; the increased detection of pesticides in the body has been found to be associated with housing adjacent to treated areas (Ref. 51) (Ref. 57). In order to mitigate the risk associated with walking into a treated area without adequate notification, stakeholders suggested increasing the posting of areas near worker housing areas (Ref. 35).

4. *Details of the proposal/rationale.* To prevent inadvertent entry into treated areas from onsite worker housing areas, EPA proposes to require a posted warning sign visible from a worker housing area if the housing area is within 100 feet of a treated area for outdoor production in addition to the required current locations. EPA expects this requirement would improve notification of workers and their families in worker housing areas, mitigating exposure resulting from entry into a treated area under an REI. This additional posting location should also improve safety of families living on or near agricultural establishments. Individuals in worker housing areas would be able to see the posted warning signs and avoid entry into the area.

EPA considered the demographics of the worker population when developing this proposal. In recognition of their low literacy and limited English language skills, EPA proposes to use the widely recognized warning sign indicating to stay out of a particular area with text in at least two languages. In addition, workers and their families generally live near agricultural areas but may not be aware of when a nearby area has been treated. Children may play around the home in a treated area, increasing the likelihood of exposure to pesticides. By posting information warning of pesticide applications near worker housing for workers and their families to see, EPA believes that they will be less likely to inadvertently enter a

treated area and thereby will reduce overall risk of exposure to pesticides. This proposal supports EPA's commitments to keeping children safe and to take specific measures to protect vulnerable or disadvantaged communities and populations.

The proposed regulatory text concerning the warning sign appears in § 170.109(b)(3)(ii) of the proposed rule.

5. *Cost.* EPA believes the cost of this proposed expansion of the areas that must be posted would be negligible. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Alternative options considered but not proposed.* EPA considered a recommendation offered by Farmworker Justice to require signs to be posted at the usual points of entry and every 100 feet along the perimeter of the treated area (Ref. 35). Many members of the PPDC workgroup, including state regulatory agencies, cooperative extension services, and the agricultural industry, said that posting warning signs every 100 feet around treated areas under an REI would impose unnecessary burdens on the agricultural employer without resulting in additional protections for workers (Ref. 36). Based on anticipated high burden without demonstrable benefits for this option, EPA decided not to propose increasing posting to every hundred feet around the perimeter.

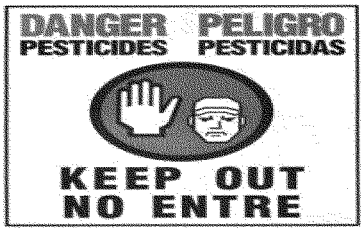
7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are there preferable alternatives to the proposed option for posting locations that EPA has not considered? If so, please describe and provide data to support the alternative.

*C. Warning Sign Content*

1. *Overview.* The current WPS warning sign says ''Keep Out'' and has a picture of a stern-faced man with an upraised hand in a red circle. EPA proposes to require the phrase ''Entry Restricted'' instead of ''Keep Out'' on warning signs. EPA also proposes to change the red shape on the sign from a circle to an octagon. EPA believes the text change would more accurately reflect the intended message for workers to be adequately prepared and informed before entering a posted area, and the octagonal shape will provide an effective signal that entry is restricted that does not depend on literacy or language spoken.

2. *Existing WPS regulations.* Under 40 CFR 170.120(c)(1), posted warning signs must state ''Danger, Pesticides'' and ''Keep Out'' in English and Spanish or another language the workers understand and contain the ''stern-faced man with the upraised hand'' in a red circle as pictured (in black and white) below.




3. *Summary of the issues.* Stakeholders, including state regulators, educators, and farmworker groups, have noted that the message on the sign can be confusing. Under the WPS, workers can be trained and equipped to enter a treated area during an REI to conduct certain early-entry tasks, such as repairing a clogged irrigation hose. [See Unit XII.B.] Due to these exceptions, including the ''Keep Out'' text on the warning sign may lead to worker confusion, since workers have been trained to stay out of a treated area posted with the warning sign and also may be directed by their employer to enter the treated area to conduct an appropriate early-entry task.

4. *Details of the proposal/rationale.* EPA proposes to revise the required text on the warning sign to convey more accurate information to workers. While warning signs would retain the phrase ''Danger, Pesticides'' text at the top, the message at the bottom of the sign would read ''Entry Restricted'' instead of ''Keep Out''. EPA believes this revision to the text more accurately reflects that the sign is a warning to those entering a treated area. ''Entry restricted'' provides a bold warning for anyone entering a treated area but also allows that some entry may be permitted.

Additionally, EPA plans to replace the current shape of the red circle that contains the stern-faced man with the upraised hand with an octagon. A red octagon is a widely-recognized symbol to stop, and this will provide a stronger signal to workers to be cautious when they encounter the posted warning sign, even if they are unable to comprehend the text. Workers will receive pesticide safety training to reinforce the meaning of the warning signs and help them in determining how to proceed. [See Unit VII.E.] The proposed warning sign is pictured below (in black and white).

EPA specifically considered input received directly from workers in developing this proposal. Workers have indicated that they prefer to get information in simple language and images that communicate the message (Ref. 40). EPA expects that these modifications to the warning sign will provide a clearer, simpler warning to workers. EPA is aware of the importance of conveying clear and simple safety information to worker populations, particularly for workers who may have a low literacy level in English or their native language (Ref. 61, p. 16). NAWS data show that 85% of workers would have difficulty obtaining information from printed materials in any language (Ref. 3, p. 17). The proposed modifications to the warning sign would make it clearer and simpler, which should enhance comprehension by low-literacy adults, and by children of farm workers (Ref. 62).

The proposed regulatory text concerning the content of the warning sign appears in § 170.109(b)(2) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of requiring employers to use the revised warning sign would be $99,000 annually, or an average of $0.25 per establishment per year. EPA estimates that employers currently purchase new signs every 2 years because weather and outdoor exposure renders the signs unusable after this period. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify specific benefits for this proposal. EPA believes that requiring the use of signs that more accurately convey the intended message would lead to better understanding of the sign and its message by workers. This would result in less confusion about what the sign means, which should mean less potential for workers to disregard the sign out of confusion, and thus, fewer workers entering treated areas under an REI which should decrease the number of occupational pesticide-related illnesses.

6. *Alternative options considered but not proposed.* Farmworker Justice

recommended that EPA replace the ''stern-faced man with the upraised hand'' with the skull and crossbones. They noted that the skull and crossbones is a universally recognized symbol that communicates high risk of danger or death, and suggest that workers would better recognize the risks associated with entering an area posted with the warning sign if it bore this symbol.

EPA considered Farmworker Justice's recommendation to change the warning sign graphic to the skull and crossbones, but decided against this option. The skull and crossbones symbol is currently used on Toxicity I and II pesticide product labeling and for designation of treated areas for certain extremely hazardous pesticides, for example, fumigants, and using the same symbol in less hazardous conditions would weaken its impact where it is needed most. The skull and crossbones symbol is associated with extreme toxicity or death, which is not always appropriate for every pesticide that has an REI. In contrast, the proposed sign indicates to workers that they should use caution in entering the treated area, but that entry may be permissible with the proper safety equipment. EPA does not want to send workers a mixed message by using the skull and crossbones on the sign. In addition, workers have been trained to recognize the current sign since the rule went into effect. The Agency believes that the ''stern-faced man with the upraised hand'' is still the most appropriate and well-recognized symbol for workers.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Should EPA consider replacing the current or proposed general field posting sign with risk-based reentry signs? What would be the costs and benefits of using risk-based signs?

## IX. Hazard Communication

### *A. Pesticide-Specific Hazard Communication Materials—General*

1. *Overview.* The existing WPS does not require employers to provide workers and handlers with pesticide-specific hazard information on the products they may be exposed to in the workplace. In contrast, OSHA's Hazard Communication Standard (HCS), which covers most workplaces, requires employers to provide chemical-specific hazard information (i.e., the safety data sheets or SDSs) to workers before they enter an area where they could be exposed and to make the same material available to workers upon request. EPA proposes to require that agricultural and handler employers provide workers and handlers with access to copies of the SDS and pesticide labeling for products that have been applied on the establishment and to which workers and handlers may be exposed. EPA believes making this information available to workers and handlers may assist them and possibly health care providers in the event of an emergency situation involving pesticide exposure. EPA also believes that providing access to specific hazard information would assist workers and handlers in better protecting themselves and others from pesticide hazards in the workplace.

2. *Existing WPS regulations.* The WPS contains several provisions designed to communicate pesticide hazard information to workers and handlers. By providing workers and handlers with relevant information, these provisions minimize workplace risks associated with pesticide use and mitigate the potential for occupational pesticide exposure. First, the WPS requires employers to train workers and handlers on basic pesticide safety and the general hazards associated with pesticides (40 CFR 170.130 and 170.230). Second, the WPS requires employers to display basic pesticide safety information at a central location on the establishment to remind workers and handlers of safe practices when working with or around pesticides and to provide information about obtaining emergency medical assistance (40 CFR 170.124 and 170.224). Third, the WPS requires employers to provide handlers with access to the pesticide labeling during pesticide handling activities and to ensure that the handler has read the labeling, or been informed in a manner the handler understands, of all labeling requirements related to safe pesticide use (40 CFR 170.232(a)). Lastly, employers must display certain information about pesticide applications made on the establishment whenever workers or handlers will be on the establishment and a pesticide has been applied or an REI has been in effect within the last 30 days (40 CFR 170.122 and 170.222). Although the existing WPS requirements provide workers and handlers with basic safety information on how to protect themselves from general pesticide hazards, and where pesticides have been applied on the establishment, no requirement exists for employers to make pesticide-specific hazard communication materials, such as the SDS and the pesticide labeling, accessible to both workers and handlers.

3. *Summary of the issues.* During the National Assessment meetings, health care, medical, and farmworker organizations urged the Agency to add pesticide-specific hazard communication provisions to the rule (Ref. 17). They noted that the WPS-required information about pesticide applications that must be displayed at the establishment provides a limited set of information about the pesticides used on the establishment. The information does not provide an explanation of the specific symptoms associated with exposure to a specific product, nor does it provide other use-related information that workers, handlers, and health care providers would benefit from reviewing in the event of a pesticide-related illness or an emergency. To support their request, they noted the disparity between information about chemical hazards required to be provided to workers and handlers covered by the WPS and the information provided to workers in all other industries under the OSHA HCS.

Farmworker organizations suggested that workers and handlers should receive ''written information, in a pictorial and low-literacy format, concerning the short- and long-term health effects associated with each pesticide used at their worksite'' (Ref. 35, p. 2). Farmworker Justice recommended that growers provide ''crop sheets,'' i.e., booklets with information on each pesticide used on an establishment, to each worker and handler at the beginning of each work period that involves entry into any treated area. (Crop sheets can take various forms but generally summarize information about the pesticides used on a particular crop, the timing of application, the type of application (for example, air blast or ground boom), and potential symptoms from exposure to the pesticide.) Farmworker Justice suggested that the crop sheets be available in English and Spanish. They believe that information presented in this format would enable workers and handlers to recognize adverse effects and seek medical assistance if they experienced symptoms related to exposure to a specific pesticide (Ref. 35). Other stakeholders have suggested that the detailed health effects information from Safety Data Sheets be provided orally to employees. EPA believes that the benefits of reading this detailed and often lengthy information to workers and handers are uncertain and such information could confuse workers with complex pesticide hazard information where the level of hazard is different for every situation.

Pesticide safety trainer representatives on the Pesticide Program Dialogue Committee Workgroup suggested that providing simple information on how to prevent potential pesticide exposure is

the most effective way to enable workers and handlers to protect themselves (Ref. 36) (Ref. 39); they did not endorse a specific type of hazard communication information. Health care organizations noted that requiring employers to maintain pesticide labeling or SDS could facilitate quick access to these documents by workers, handlers, or their representatives in the event of an accidental exposure requiring medical attention. These groups noted that health care practitioners can provide more appropriate medical attention if they can review and reference either the label or the SDS. [See Unit XIV.]

4. *Details of the proposal/rationale.* EPA proposes to require that agricultural and handler employers make available to workers and handlers SDS and the labeling for pesticides used on the establishment that require WPS compliance. This proposed requirement would be in addition to the existing requirements to notify workers and handlers of the date, time, and location of application, length of REI, and to identify the pesticide product. Employers would be required to maintain the SDSs and the pesticide labeling on the establishment for 2 years from the date of the pesticide application. Workers, handlers or their authorized representatives could request access to the pesticide-specific hazard information during normal business hours. [See Units IX.B. and IX.C. for proposed revisions to employer requirements to provide information about pesticide applications.]

In adopting the Hazard Communication Standard, OSHA said there was evidence to indicate potential for chemical exposure in every type of industry, and that lack of knowledge about those hazardous chemicals puts employees at significant risk of experiencing material impairment of health (52 FR 31852; August 24, 1987) (59 FR 6126; February 9, 1994) (Ref. 63). While the WPS pesticide safety training provides general information about risks associated with pesticide exposure and how a worker or handler can protect himself or herself, the addition of a requirement to provide information about each specific pesticide would provide complete hazard information. The addition of a requirement to provide pesticide-specific hazard information about each pesticide product requiring WPS compliance that is applied on the establishment would provide workers and handlers with more complete information about the chemical hazards they may encounter in the workplace.

Requiring employers to maintain the product labeling and SDSs for products applied on their establishment would ensure that workers and handlers have access to detailed types of pesticide hazard and emergency response information that would enable them to better protect themselves and respond to emergencies. Additionally, as discussed in Unit XVI., medical personnel are generally able to provide better treatment in the event of a pesticide exposure incident when they have more information about the pesticide product to which the worker or handler may have been exposed. Allowing authorized representatives of workers and handlers to have access to the product labeling and SDSs upon request would assure that the information can be accessed if a worker or handler is incapacitated; in addition, it would help assure that access to this information is not impeded due to employee fears of retaliation. It also increases the likelihood that workers and handlers will receive assistance in reading and understanding these documents in cases where they need such assistance.

EPA believes that imposing this requirement would not be unduly burdensome to employers and would provide workers, handlers, and emergency responders with access to appropriate pesticide-specific hazard information that should meet their needs. The SDS provides succinct information about the known health hazards of the material, providing hazard information that typically is not presented on the product labeling, and it is readily available from pesticide manufacturers and should be provided with the pesticide container at the point of sale. Based on EPA's review of current state pesticide laws and regulations, and labor laws pertaining to agricultural operations using pesticides, 12 states currently require agricultural employers to make SDSs available to employees that may potentially be exposed to pesticides as part of their occupational duties (Ref. 64). Ten of the states implement this requirement under state labor regulations. Florida and California implement it under state pesticide laws.

The use of SDS in hazard communication in all other industries, as well as in agriculture in several states, leads the Agency to believe that it would be the appropriate vehicle to make pesticide-specific hazard information available to workers and handlers.

EPA recognizes that some employers may maintain electronic copies of their records. Under the proposed option, an employer could maintain a copy of the pesticide labeling used for the application and the corresponding SDS in either paper or electronic form. The employer would need to be able to provide a paper copy of the materials upon request. Employers would not need to update the pesticide labeling on file each time a new version is released; the labeling on file must correspond with the labeling used at the time of application.

The proposed regulatory text concerning the provision of SDSs and pesticide product labeling appears in § 170.11(b) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of requiring employers to maintain application information, SDS, and labeling for 2 years would be $3 million annually, or about $8 per WPS establishment per year. The cost to obtain the SDS and labeling, as well as the additional information described in unit IX.B., and to make it available would be about $5.3 million annually, or about $14 per establishment. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the specific benefits associated with this proposal; however, the Agency believes that workers and handlers would benefit from having access to more complete information about the pesticides to which they may be exposed. The additional information also could be used to assist in more accurately diagnosing and treating pesticide-related illnesses. EPA believes the costs of making more pesticide application information available to workers and handlers are reasonable when compared to the expected benefits associated with the requirement.

6. *Alternative options considered but not proposed.* EPA considered three alternatives to the proposed option: a requirement to make crop sheets available, a requirement to translate SDSs into different languages, and limiting the required pesticide information to the pesticide labeling.

First, the Agency considered requiring employers to provide workers and handlers with a crop sheet in English and Spanish for each pesticide they might encounter, each time they enter the treated area. The Agency is aware of several attempts by state agencies to pilot this use of crop sheets. California and Texas have had requirements for employers to provide crop sheets to those working in pesticide-treated areas. Texas funded the initial development and periodic updating of the crop sheets, but the process became too expensive and labor intensive for the

state to continue. The states reported that the crop sheets were left as litter in the treated area. Texas reported that the redundancy between the requirements under Texas law and the WPS contributed to the decision to discontinue the crop sheet program.

EPA believes that developing crop sheets as recommended by farmworker organizations would be challenging because they suggested simple pictorial descriptions of hazards and symptoms, which would not be accomplished easily with the technical information that is generally included on an SDS. In addition, many agricultural enterprises produce a variety of commodities, increasing the number and complexity of the crop sheets. Agricultural practices differ across regions and according to local conditions, making it difficult to develop a standard set of crop sheets that could be used nationally; a booklet that would be useful for vegetables grown in New England would not be representative of practices in vegetable production in the Southwestern United States. As part of its consideration, the Agency assessed the cost of developing crop sheets based on the assumption that pesticide registrants would develop the crop sheets because they have the most complete knowledge of each pesticide's properties, hazards, and potential health effects. The estimated cost of $13 million annually does not include copying and distributing the crop sheets to workers and handlers every time they enter a treated area. Copying and distributing the crop sheets would significantly increase the cost of this option.

Based on the experience of states that have attempted to implement crop sheet distribution programs, EPA does not believe that workers and handlers would benefit sufficiently to justify the cost of developing, compiling, translating, and distributing specific crop sheets.

Second, EPA considered requiring pesticide-specific hazard communication materials to be made available in a language that workers and handlers can understand. This would mean translating a copy of the SDS and labeling into each language understood by a worker or handler on the establishment and maintaining copies of the original and translated SDS and labeling, rather than providing the information in English and putting the burden of translation on the worker or handler.

The NAWS estimates that the majority of agricultural workers (83%) are non-English speakers (Ref. 65). Additionally, NAWS data show that 85% of workers ''would have difficulty obtaining information from printed materials in any language'' (Ref. 61, p. 16). Additionally, workers and handlers speak a large number of languages and dialects, and the Agency believes it would be impractical to translate and present complex information into so many different languages. This requirement would be complicated further by the fact that some indigenous worker and handler populations do not have a written language. EPA assumes that a majority of requests for the SDS will be made related to a health care incident, which means that either the health care practitioner or a worker advocacy support group would likely receive the information. These groups are more likely to have staff that speak English and are capable of translating the information for the worker or handler if necessary.

All other industries—including the construction, janitorial, and maintenance industries where there are traditionally significant numbers of workers with limited skills reading or understanding English—use SDSs in English to meet OSHA's Hazard Communication Standard requirements to make chemical hazard information available to employees (29 CFR 1910.120(g)). Most readily available sources of pesticide-specific hazard information, such as SDS and pesticide labeling, are in English. EPA did not estimate the cost of translating the SDS and labeling into each language spoken by workers and handlers, but expects that the burden would be extremely high. The burden of producing SDSs in multiple languages would probably fall on registrants, but agricultural and handler employers would bear the burden of obtaining and maintaining a copy of this information in every language spoken by their workers and handlers.

Based on this information, EPA does not believe that the risk reductions expected to result from providing SDSs to workers in their native languages would justify the significant costs of doing so. Medical and legal personnel who would provide assistance to workers in the event of a suspected exposure are proficient in English and could use the SDSs as already developed by the pesticide registrant.

Finally, EPA considered requiring the employer to maintain only labeling for pesticides that require WPS compliance that are applied on their establishments, rather than both the product's labeling and SDS. Pesticide labeling must accompany the product; therefore, employers generally already have a copy of the labeling for products applied on their establishment. When a pesticide is applied by a commercial applicator or someone other than the agricultural employer, he or she can easily request a copy of the pesticide labeling from the person who made the application. The SDS, on the other hand, does not accompany the product and may require more time to locate, increasing the burden on the agricultural employer. Limiting the requirement to the pesticide labeling could reduce the burden on agricultural employers.

EPA believes that the burden associated with retrieving a pesticide SDS is, however, not substantial because the SDS is readily available online and can be requested from and provided by the pesticide manufacturer and sometimes the pesticide dealer. The SDS contains information necessary for the diagnosis and treatment of certain pesticide-related illnesses. In some instances of pesticide-related illnesses, time is of the essence in determining the course of treatment. In these instances, having the SDS readily available for the worker, handler, and/or treating medical personnel could be essential to ensuring proper treatment. The cost for requiring the employer to collect and make available only the labeling would be about $1.6 million, or about $4 per establishment. EPA believes that the additional burden associated with retrieving the SDS for each product is justified by the potential benefit to workers and handlers from having the SDS available in the event of a pesticide-related illness.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- What would be the burden on employers to maintain the SDS and pesticide label for 2 vs. 5 years?
- Do agricultural employers already collect SDSs? If so, how do they obtain them and what burden is associated with retrieving the SDS for one or more products?
- What are the benefits and drawbacks of requiring employers to maintain and provide access to employees and others the proposed pesticide-specific hazard information?
- Are there other approaches for providing workers and handlers with understandable, readily accessible, and relevant information on the symptoms, short-term health effects, and long-term health effects of exposure (including prenatal exposure) to specific pesticides? If so, please describe these approaches, their implementation, and the advantages they provide in comparison to the proposed approach.
- Are there other data on the benefit to workers and handlers from receiving

pesticide-specific information before every entry into a pesticide treated area?

• Does opening access to pesticide-specific information to authorized representatives raise any problems? If so, please describe the potential issues with particularity and provide supporting information where available.

*B. Pesticide Application Information—Content and Timing*

1. *Overview.* The existing WPS contains requirements for agricultural employers to record and display information about pesticide applications and to make that information accessible to workers and handlers. However, the existing requirements do not include some key information about pesticide applications that could help workers and handlers better identify treated areas on the establishment and avoid pesticide exposure. EPA proposes to require additional information about pesticide applications to be recorded. EPA also proposes to change the timing of when employers must record the information. EPA believes the additional information would better inform workers and handlers of relevant information about pesticide applications. The more flexible timing requirements for recording application information would reduce burden on employers. [See Unit IX.C. for proposed revisions to requirements for displaying information about pesticide applications.]

2. *Existing WPS regulations.* The existing WPS requires agricultural employers to record and display certain information about pesticide applications at a central location on the establishment. Employers must comply with this requirement when workers or handlers will be on the establishment and an application of a pesticide requiring WPS compliance has been made or an REI has been effect within the last 30 days (40 CFR 170.122 and 170.222). The purpose of this requirement is to communicate information to workers and handlers about the locations of potential pesticide hazards on the establishment, for example, entry restricted areas or areas under an REI. The WPS requires employers to record and display the following information about pesticide applications:

• Location and description of the treated area,
• Product name,
• EPA registration number,
• Active ingredient(s) of the pesticide product,
• Time and date the pesticide is to be applied, and
• REI for the pesticide.

The existing WPS requires the application information to be accurate and to be displayed before application takes place if workers are present on the establishment. If no workers or handlers are on the establishment at the time of application, the information must be posted before the first work period when workers or handlers are on the establishment. If warning signs are posted for the treated area before an application, the specific application information for that application must be displayed at the same time or earlier, in accordance with the display requirements. When workers or handlers are present on the establishment, the employer must display the application information for at least 30 days after the end of the REI. Employers may discontinue the information display prior to 30 days after the end of the REI when workers or handlers are no longer on the establishment.

3. *Summary of the issues.* During the National Assessment and SBREFA consultation process, employers and pesticide applicators noted that they had difficulty recording and displaying application information before the application occurs (Ref. 17) (Ref. 18). They cited changes in pesticide application plans, usually to accommodate changing weather conditions, as a primary reason for not being able to accurately record the pesticide application information.

State regulatory agencies noted that the current requirement for providing information about pesticide applications lacked specific information necessary to enable state inspectors to accurately determine the start and end times of the REIs (Ref. 17). As a result of a high-profile pesticide enforcement case and the aforementioned difficulty determining REI start and end times, North Carolina informed EPA that it has taken steps to amend the state pesticide laws. The amended laws would require the end times of pesticide applications to be recorded as part of state pesticide recordkeeping so inspectors could calculate precise REIs (Ref. 66).

4. *Details of the proposal/rationale.* In addition to the pesticide application information currently required to be recorded, the Agency proposes to require agricultural employers to record further specific information about pesticide applications. The proposed information would include the specific crop or site treated, the start and end dates and times of the application, and the end date and duration for the REI. EPA also proposes to revise the requirement for when information must be recorded to allow flexibility for agricultural employers to record the pesticide application information no later than the end of the day of the application.

An agricultural establishment can grow a variety of crops in specific areas. EPA believes that adding the type of crop site to the record would help workers, handlers, and pesticide inspectors to distinguish the particular treated area to which the information pertains. EPA also believes that including the specific start and end times for the pesticide application, in addition to the date of application, would assist workers, handlers, and inspectors in accurately calculating the date and time the REI ends. The requirement for employers to note the specific date and time when the REI ends would clarify when workers may enter the treated area. The proposed revisions would require agricultural employers to make the pesticide application information (as well as the proposed pesticide-specific hazard information [see Unit IX.A.]) available no later than the end of the day of the pesticide application when workers are on the agricultural establishment that day. By ''make available,'' the Agency means that the agricultural employer must, at a minimum, have the materials in a place where the workers, upon request, can have access to view them. If workers are not on the establishment on the day of application, the information must be made available at the beginning of the first work period following application. Changing when the application information must be made available allows flexibility if the application schedule changes. Making these changes would allow more realistic timeframes for recording application information and would take into account the realities of fluctuations in application timing. The change also would accommodate the requests to record the end time of the application and timing of REI. Information would be more accurate and the burden of correcting the information would be reduced.

EPA does not believe that allowing the application information to be made available by the end of the day would put workers and handlers at risk because notification of treated areas to workers and handlers must occur before the treatment commences by either oral notification or by the posting of warning signs. Therefore, EPA believes that workers would be protected during application and immediately post-application by the WPS notification provisions.

The proposed regulatory text concerning the timing and content of

pesticide application information required to be displayed appears in § 170.11(b) of the proposed rule.

5. *Costs.* Because the information required in this proposal is linked to the retention of the pesticide labeling and SDS, the costs were calculated together. Therefore, the estimated costs for this proposal are included in the cost discussed in Unit IX.A. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Request for comment.* EPA specifically requests comment on the following questions:

- Would the additional pesticide application information proposed by EPA impose undue burden on the applicator or the employer?
- Are there benefits or drawbacks to requiring this additional information that EPA has not considered? If so, please describe.

*C. Pesticide Application Information—Location and Accessibility*

1. *Overview.* The WPS contains requirements for agricultural employers to record and display information about pesticide applications made on the establishment at a central location on the establishment from the time of the application until 30 days after the REI expires. EPA proposes to replace the current requirement with a requirement for employers to make pesticide application information available on request by a worker, handler, or his or her representative. The proposal would also increase the time employers must maintain the application information on the establishment from 30 days after the REI expires to 2 years. The employer would maintain the pesticide application information in the same location as the SDS and labeling (pesticide-specific hazard communication; see Unit IX.A.). EPA believes this proposal would reduce the overall burden on agricultural employers while still providing workers and handlers with reasonable access to information regarding pesticide applications and pesticide-specific hazard information.

2. *Existing WPS regulations.* As described in Unit IX.B., the WPS requires agricultural employers to record and display certain information about WPS-covered pesticide applications at a central location on the establishment when workers or handlers will be on the establishment and an application of a WPS-covered pesticide has been made or an REI has been in effect within the past 30 days (40 CFR 170.122 and 170.222).

3. *Summary of the issues.* During the National Assessment meetings, stakeholders, particularly employers, noted the difficulty in maintaining the pesticide application information at a central posting site (Ref. 17). Pesticide application plans frequently change, and keeping a notice board at a central location, which, in some cases, may be a significant distance from the treated area, up to date with those changes presents a challenge to the employer, especially prior to the application.

Agricultural employer stakeholders noted that weathering of the posted information quickly impacts legibility, making it difficult to meet the legibility requirements for the information (Ref. 67). Some states, including Florida, recognize the difficulty facing employers and have developed a portable central location display. Florida's display includes a laminated metal sign and weatherproof box to contain the necessary WPS information. Florida developed this display to increase compliance, to increase durability of the poster and information, and to provide a solution to the problems noted with maintaining the legibility of information required to be displayed at a central location on large establishments (Ref. 67).

Keeping the information current at the central location has been problematic for agricultural employers, as records of frequent pesticide applications on an establishment with multiple crops can be difficult to maintain accurately during the growing season (Ref. 17). Employers argued that keeping the application information at a central location essentially requires them to maintain two copies of pesticide application records because they cannot rely on the WPS central posting site to be the only copy of application records, imposing a double recordkeeping burden. Keeping two separate sets of application information records with the same information on a busy establishment can be difficult.

4. *Details of the proposal/rationale.* EPA proposes to require the employer to maintain pesticide application information and make it accessible to workers, handlers, or authorized representatives of workers or handlers upon request, and to eliminate the requirement for agricultural employers to display the pesticide application information at a central location. The proposed requirement does not specify a particular location on the establishment where the employer must store records, but does require that pesticide application records must be maintained on the establishment and must be made available upon request to workers, handlers, or their representative during normal business hours. The application information must be maintained in addition to the pesticide-specific hazard information. [See Unit IX.A.]

The requirement for display of pesticide application information at a central posting site has been the most frequently cited area for non-compliance and violations. Between 2006 and 2008, there was an annual average of 770 WPS violations related to central posting reported by states to EPA's Office of Enforcement and Compliance Assurance (Ref. 68) (Ref. 69) (Ref. 70). EPA has concerns about the difficulties expressed by stakeholders such as regulators and agricultural employers in maintaining this information at the central posting area, and it is reflected in the violation records. EPA has concerns about the usefulness of the central display to workers and handlers, especially on large establishments, because the worker or handler may be assigned to work miles from the central display and would not encounter it on a routine basis. Moreover, if the information is not accurate or correctly maintained, workers and handlers could be deprived of receiving accurate information about pesticide applications on the establishments. Rather than continue a requirement that burdens employers without clear benefits to workers and handlers, EPA has decided to revise the requirement related to displaying information about pesticide applications.

The proposed requirement for maintaining and making pesticide application information (and the related pesticide-specific hazard communication information as discussed in Unit IX.A) available to workers and handlers upon request parallels OSHA's requirement for employers to provide hazard information. EPA recognizes that OSHA's HCS has been successfully implemented in all other industries, and that employers covered by the WPS struggle with maintaining the central display according to current requirements. The intent of the requirement is to give the workers and handlers access to accurate and legible pesticide application and hazard information. EPA believes that a requirement that allows employers to keep records in a location other than on display at a central location will significantly reduce burden on the employers without sacrificing the

amount or type of information to which workers or handlers have access.

The proposed regulatory text concerning the accessibility of application information appears in § 170.11(b) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of requiring employers to make pesticide application information available upon request and eliminating the requirement for central posting would be $1.1 million annually, or about $3 per WPS establishment. This estimated cost does not include any additional copies of the pesticide application information necessary because time and weather render the display illegible. The cost estimate includes an assumption that 25% of workers and handlers would request access to the materials, which EPA recognizes is a conservative estimate and drives the cost of the requirement higher. The anticipated benefits of this proposal were discussed in the section above. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA believes that this proposal would reduce the burden on employers by allowing them to maintain the records in a location that is not subject to weathering and would not substantially increase the burden on workers and handlers seeking this information. EPA believes that most workers do not routinely pass the central posting area because their workplace is at a different part of the establishment. The proposed change would continue to make available at a designated location pesticide application information for workers and handlers.

6. *Alternative options considered but not proposed.* EPA considered requiring that employers post specific pesticide application information on the signs used to post each treated area. Under this option, specific information about the pesticide used, date of application, and REI would be included on the bottom of each warning sign posted around a treated area. [See Unit VIII.C. for a discussion of the proposals related to notifications to workers and handlers.] This option would allow early-entry workers to access information about the specific pesticides used in areas where they may be working at the time they enter the treated area. However, this alternative option would substantially increase the burden associated with posting treated areas because employers would have to copy the pesticide and application information onto each warning sign. In addition, when treated areas are posted for multiple days, the sign could become weathered and illegible, imposing the additional burden on the grower to update the legibility of the sign or negating the intended protection associated with providing the information at the treated area. This option could also reduce information available to workers and handlers because pesticide application information would not be available when the treated area does not require a posted warning sign.

EPA believes that the proposed options to post a general warning sign at pesticide treated areas [see Unit VIII] and to require the employer to maintain and make accessible pesticide-specific application information balance the need for workers and handlers to have access to pesticide hazard information and the burden on agricultural employers. Therefore, EPA decided not to propose this option.

*D. Pesticide Application Information and Pesticide-Specific Hazard Communication Materials—Retention of Records*

1. *Overview.* The current WPS requires employers to maintain information about pesticide applications from the time of application until 30 days after the REI expires. The Agency proposes to require employers to retain the pesticide application and related pesticide-specific hazard communication information for 2 years from the date of the end of the REI for each product applied. EPA believes the extended recordkeeping period would ensure that state, tribal and federal agencies, workers, handlers, and health care workers have access to the information when necessary to investigate a health-related pesticide incident or potentially unlawful pesticide application.

2. *Existing WPS regulations.* The existing WPS requires agricultural employers to display information about pesticide applications from the time of application until 30 days after the REI has expired (40 CFR 170.122(b) and 170.222(b)).

3. *Details of the proposal/rationale.* The Agency proposes to require employers to retain and make available for 2 years from the date of the end of the last applicable REI pesticide application information and related pesticide-specific hazard communication information that includes the SDSs and product labeling for pesticides that require WPS compliance. EPA expects the extended recordkeeping period would ensure that application information is maintained for a sufficient period of time to allow for follow-up in the event of health problems that might be related to pesticide exposure or for investigation of a suspected pesticide misuse. EPA recognizes that some employers may maintain electronic copies of their application records and other documents such as SDS and pesticide labeling. Under the proposed option, an employer could maintain a copy of the application information, the pesticide labeling used for the application, and the corresponding SDS in either paper or electronic form. The employer would need to be able to provide access to the electronic format of the materials or make available a paper copy of the materials upon request. Employers would need to ensure that the copy of the pesticide label on file is the same as the label for the pesticide product at the time it was applied on the establishment. Employers would not need to update the pesticide labeling or SDS on file each time a new version is released; however, if the product used in a subsequent application bears a different version of the labeling, the employer would need to keep both versions of the labeling on file, in a manner identifying which version was used on which occasion.

EPA believes the current 30-day timeframe for retention of the application information is not adequate for workers or handlers to access the information, especially if there has been a delayed health impact from the exposure. It is possible for latent health effects from a pesticide exposure to occur after the 30-day window, necessitating access to information about the potential source of exposure and the types of pesticides that may have been involved. In 2004 and 2005, farmworker women who had worked in Florida, North Carolina, and New Jersey gave birth to babies with birth defects. In 2006, EPA investigated the incidents and sought information about pesticide exposures several months after the women's employment ended (Ref. 71). The ability to perform a full investigation into the serious health effects was hampered by the 30-day limit for retention of the WPS-required application information (Ref. 72).

The proposed regulatory text concerning the 2-year recordkeeping requirement appears in § 170.11(b)(2) of the proposed rule.

4. *Costs.* The costs of this proposal were discussed in Unit IX.A. in conjunction with the requirement to retain and make available the SDS and pesticide labeling. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic

Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

5. *Alternative options considered but not proposed.* EPA considered requiring application records and hazard information to be maintained for 5 years. The incremental cost between the 2-year and 5-year period is negligible because the principal costs of recordkeeping occur when the record is created. Several states, including California, have required employers to retain WPS records for 2 years. Based on their experience, 2 years is a sufficient time to allow the state to investigate complaints. Therefore, it is not clear that the increased burden associated with requiring employers to maintain records for 5 years would be justified.

6. *Request for comment.* EPA specifically requests comment on the following questions:

- Should EPA consider a different timeframe for recordkeeping for this requirement? If so, what period and why?
- What burdens would be imposed on agricultural employers as a consequence of the proposed two-year record retention requirement?
- How would the burden of the proposal to maintain application records compare with the current requirement to maintain a central display?

## X. Information Exchange Between Handler and Agricultural Employers

1. *Overview.* The current WPS requires handler and agricultural employers to exchange information about pesticide applications. EPA proposes to add to the existing requirement information about the location of the ''entry-restricted areas'' and the start and end times of pesticide applications. EPA also proposes to require the handler employer to provide any changes to pesticide application plans to the agricultural employer within 2 hours of the end of the application rather than before the application. Changes to the estimated application end time of less than one hour would not require notification. EPA expects these changes to reduce worker pesticide exposure by providing accurate, timely information about applications to the agricultural employer.

2. *Existing WPS regulations.* When handlers are employed by an employer other than the agricultural employer, the existing WPS requires the agricultural employer to provide the handler employer with information about treated areas on the agricultural establishment, including specific location and description of any such areas and restrictions on entering those areas (40 CFR 170.124).

The WPS requires handler employers to provide agricultural employers with the following information prior to the pesticide application:

- Location and description of the area to be treated,
- Time and date of application,
- Product name, active ingredient(s), and EPA Registration Number for the product,
- REI,
- Whether posting and/or oral notification are required, and
- Any other product-specific requirements on the product labeling concerning protection of workers or other persons during or after application.

Handler employers are currently required to inform agricultural employers when there will be changes to scheduled pesticide applications, such as to give notice of changes to scheduled pesticide application times, locations, and subsequent REIs, before the application takes place (40 CFR 170.224).

3. *Summary of the issues.* State regulatory agencies participating in the IGW raised concerns over the regulation's silence regarding handler employers' responsibilities in the event a scheduled pesticide application changes resulting in the original information no longer being accurate (Ref. 14). IGW members questioned field implementation of the provision because the agricultural employer could send a worker into an area that is believed not to be treated while the handler employer changes the application schedule. As a result, the worker would be at risk of being directly or indirectly exposed to pesticides.

4. *Details of the proposal/rationale.* EPA proposes two additions to the information currently required to be exchanged between agricultural and handler employers: the location of the ''entry-restricted area'' and the start and end times of the pesticide application. This information should help clarify the current rule and assist with field implementation.

First, EPA proposes to expand the agricultural employer's required information exchange with the handler employer to include the location of the proposed ''entry-restricted area,'' which EPA proposes to define as the area surrounding a treated area during pesticide application from which workers or other persons must be excluded during the pesticide application.

Second, to clarify and improve handler employer requirements for providing information to the agricultural employer, EPA proposes to require the handler employer to include the proposed start and estimated end times for the application, which are needed to accurately calculate the REI end date and time. EPA proposes to require the handler employer to provide changes to pesticide application plans to the agricultural employer within 2 hours of the end of the application rather than before the application. Changes to the estimated application end time of less than one hour would not require notification. These changes would allow more flexibility for handler employers by reducing the number of times they would have to communicate with the agricultural employer while maintaining communication of important application and safety information. Currently, the handler employer or handler must inform the agricultural employer of all changes to pesticide application timing before the application takes place. For example, if a rain storm delayed the application, this could mean multiple exchanges of information before the application takes place.

EPA expects these changes would make the required information exchange easier for agricultural and handler employers to understand and follow. Providing more accurate information about the timing of applications and subsequent REI would assist employers in ensuring that workers and handlers are kept out of areas being treated or under an REI unless properly protected. Overall, the proposal should reduce the number of incidents resulting from workers or handlers entering treated areas unaware of an ongoing application or existing REI.

The proposed regulatory text concerning the information exchange between agricultural employers and handlers appears in §§ 170.9(k) and 170.13(i)–(j).

5. *Costs and benefits.* EPA estimates the proposed revisions to the information exchange requirements would have no or negligible cost because they clarify the rule and codify existing guidance. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Request for comment.* EPA specifically requests comment on the following questions:

- Is it reasonable to require the handler employer to notify the agricultural employer of changes to

scheduled pesticide applications within 2 hours of the end of the application?

• What are the benefits to expanding the information to be exchanged between handler and agricultural employers? Are there any drawbacks?

• Would this impose additional burden on employers? If so, what burden and how could it be reduced?

## XI. Handler Restrictions

### *A. Suspend Application*

1. *Overview.* EPA proposes to add a provision to the WPS stating that the handler or applicator must ''immediately cease or suspend application if any worker or other person, other than an appropriately trained and equipped handler, is in the treated or entry restricted area.'' This statement would help to ensure that handlers understand their responsibility to protect workers from pesticide exposure through direct contact or drift.

2. *Existing WPS regulations.* The current rule requires handlers to ''assure that no pesticide is applied so as to contact, either, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.''

3. *Stakeholder information considered by EPA.* WPS inspectors have informed EPA that the current WPS language does not provide sufficient directive for handlers to stop an application if a person, other than a trained and properly equipped handler, enters the treated area and entry-restricted area during application.

4. *Details of the proposal/rationale.* The proposal would require handlers to cease application if they observe any person other than a trained and properly equipped handler to be present in the treated or entry-restricted area. This clarifies and strengthens the current WPS language which does not currently include a ''cease application'' statement but does require the handler to assure no pesticide is applied so as to contact a worker. This additional ''cease application'' statement is an important clarification considering the SENSOR-Pesticides/California Department of Pesticide Regulation publication that cites drift as the leading factor contributing to reports of acute occupational pesticide poisoning cases in agricultural workers (Ref. 11). Further, the Washington State Department of Health's *Pesticide Incident Reporting and Tracking Review Panel 2009 Annual Report* details an incident involving 54 workers exposed to drift from an aerial application where 47 workers sought medical treatment for multiple health symptoms. The adverse effects of this incident may have been mitigated if the handler acted to cease application when he saw the workers located in the treated or entry-restricted area (Ref. 73).

The regulatory text concerning the suspension of an application appears in § 170.205(a) through (b) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of this proposal would be negligible because it clarifies an existing requirement.

6. *Request for comment.* EPA specifically requests comment on the following questions:

• Will this proposal, in combination with the entry-restricted area requirements proposed in Unit XIV., effectively reduce worker exposure to spray drift? Please provide rationale and data to substantiate your response.

• Are there alternatives to this proposal that would better protect workers and others from spray drift, while reserving the flexibility to use pesticides in agriculture? Please provide rationale and data to support your response.

### *B. Establish Minimum Age of 16 for Handling Pesticides*

1. *Overview.* The current WPS does not establish any age restrictions for handlers. EPA proposes to prohibit persons younger than 16 years of age from handling pesticides, with an exception for handlers working on an establishment owned by an immediate family member. See Unit XVIII.A., for a complete discussion of the immediate family exception. EPA expects this change will result in reduced risks to children and improved competency in handling, resulting in reduced exposure to workers, handlers, bystanders, and the environment.

2. *Existing WPS regulations.* The WPS does not establish a minimum age for handlers.

3. *Summary of the issues.* FLSA establishes a minimum age of 16 years for any person employed in agriculture to handle a pesticide designated as toxicity category I or II. The FLSA's statutory parental exemption in agricultural employment permits a youth under the age of 16 to perform any work if he or she is employed ''by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.'' 29 U.S.C. 213(c)(2). The CHPAC recommended that EPA establish a minimum age of 16 for pesticide handlers of any agricultural pesticide, based on a recommendation from NIOSH. (Ref. 74). Handlers, compared to workers, face exposure to pesticides at higher levels as they mix, load, and apply pesticides (Ref. 75). A report from NIOSH compiles studies that demonstrate ''[y]outh are at increased risk of injury from lack of experience. Inexperienced workers are unfamiliar with the requirements of work, are less likely to be trained to recognize hazards, and are commonly unaware of their legal rights on the job. Developmental factors—physical, cognitive, and psychological—may also place them at increased risk.'' (Ref. 76)

In addition, during the SBREFA consultation described in Unit IV.B., the SERs recommended establishing a minimum age of 16 under the certification of pesticide applicators rule (40 CFR 171), with an exception to the minimum age on family farms (Ref. 42).

4. *Details of the proposal/rationale.* EPA proposes to prohibit a handler employer from allowing persons younger than 16 years old to perform handling tasks. The minimum age would not apply to handlers that fall under the WPS immediate family exception, i.e., working on a farm owned by an immediate family member.

As discussed above, the FLSA already establishes 16 as a minimum age for persons using toxicity category I and II pesticides in agricultural employment. This restriction does not extend protection to all handlers under the WPS. Handlers may use pesticides in any toxicity category, from I to IV. EPA recognizes that some states may have additional requirements, such as requiring parental permission for the employment of children ages 16 and 17 in agricultural operations. EPA seeks to ensure that all adolescent handlers receive equal protection, regardless of the toxicity of the pesticide used.

OSHA asked NIOSH to evaluate the existing Hazardous Order regulations and to make recommendations for strengthening the protections provided by these requirements. Among other things, NIOSH responded with rationale for changing the hazardous order related to pesticide use in agriculture to establish 16 as the minimum age for using all pesticides, not only those pesticides in toxicity categories I and II. The NIOSH report cites data from a study which examined pesticide poisoning among working children. A total of 531 children under the age of 18 years were identified to have acute occupational pesticide-related illness. It was estimated that 62% of the cases were children employed in agricultural production and services. Of the 81% of cases where the EPA acute toxicity category was available, 67% of the illnesses were associated with toxicity category III pesticides, which are not

currently prohibited under the hazardous order (Ref. 76, p. 93).

Aside from any increased risks that children may suffer from pesticide exposures, the Agency recognizes that children generally lack the experience and judgment to avoid or prevent unnecessary exposure. A study conducted by the National Institutes of Health also demonstrates that because their brains are still developing, adolescents may have trouble balancing risk-reward decision-making and goal-oriented decision making (Ref. 77 p. 7). Although adolescents may understand the possible consequences of their actions, they are more likely to make decisions based upon their initial emotional responses, which will often lead them to make suboptimal choices (Ref. 77, p. 7). Additionally, younger persons are less likely to be aware of their rights and how to recognize hazards in the workplace (Ref. 76).

The proposed age restriction would include a requirement for the handler employer to record the training and the birth date of all persons trained. It would be possible for someone under 16 years old to receive handler training; however, the trained individual would not be permitted to perform handling tasks until they turn 16. The proposed age restriction advances the Agency's commitment to protecting children.

EPA recognizes the independence of the family farm and believes that farm family parents are in the best position to make decisions about the types of activities in which their children can safely engage. EPA believes that handlers working on an establishment covered by the immediate family exception would be adequately prepared and supervised by family members. Therefore, the minimum age requirement for handlers would not apply to persons performing handling tasks when covered by the immediate family exemption.

The proposed regulatory text concerning the minimum age of 16 for handlers appears in §§ 170.9(c) and 170.13(c) of the proposed rule. The exception for persons covered by the immediate family exemption is found in § 170.301(a)(1)(i).

5. *Costs.* EPA estimates the cost of requiring handlers to be at least 16 years old would be $466,000 annually, or about $2 per agricultural establishment per year. It would impose no cost on commercial pesticide handling establishments. The cost of maintaining records of handlers' birth dates is included in the cost of retaining records for handler training. EPA recognizes that the estimated cost of this proposal is conservative because it does not reflect state requirements for minimum age that exceed the FLSA. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the benefits associated with this proposal. However, EPA believes this proposal would improve the health of adolescent handlers, as well as other workers and handlers on the establishment and the environment. As discussed above, adolescents' judgment is not fully developed. EPA believes that restricting adolescents' ability to handle pesticides would lead to less exposure potential for the handlers themselves, and less potential for misapplication that could cause negative impacts on other handlers or workers on the establishment, as well as the environment.

6. *Alternative options considered but not proposed.* As an alternative, EPA considered proposing a minimum age of 18 for pesticide handlers, which would also include an exception for persons performing handler tasks on a farm owned by an immediate family member. Handlers must exercise good judgment and responsible behavior to best protect themselves and others as they work with these potentially toxic materials. Research shows the differences in the decision-making of adolescents and adults leads to the conclusion that handlers who are adolescents may take more risks than those who are adults. The Department of Labor has established a general rule, applicable to most industries, except agriculture, that workers must be at least 18 years old to perform hazardous jobs (29 CFR 570.120) (75 FR 28458; May 20, 2010). The use of agricultural pesticides presents demonstrable risks of significant harm to the applicator, the public, and the environment, and these risks are significantly influenced by the user's judgment and decision-making skills. Requiring handlers to be 18 years of age or older would prevent youth under 18 from being exposed while performing handling activities and would reduce risks to other persons and the environment from misapplication owing to users' poor judgment or decision-making skills. This option would harmonize the age requirements for pesticide handlers with the minimum age requirements for workers performing hazardous jobs in other industries. This alternative would also align with society's general trend toward increasing the ages at which persons are eligible to do certain things that present recognized risks, such as consuming alcohol or becoming a licensed driver.

EPA estimates that requiring handlers to be at least 18 years old would cost about $3.1 million annually, or $11 per agricultural establishment and $320 per commercial pesticide handling establishment per year. EPA proposes to follow the existing framework of the FLSA and DOL's rules to propose a minimum age of 16, based on the existing rules and the higher cost of increasing the minimum age for handlers to 18.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are there alternatives that have not been considered that would improve protections for adolescent handlers, either those under 16 or 18 years old, while allowing flexibility for pesticide use for agriculture?
- What would be the impact on state programs of establishing a minimum age of either 16 or 18 for handlers?
- Would establishing a minimum age of 16 for handlers have an impact on state requirements for certified applicators to be a minimum age? If so, please provide data to support this position.
- Would establishing a minimum age of 18 for handlers have an impact on state requirements for certified applicators to be a minimum age? If so, please provide data to support this position.
- Are there additional benefits or burdens with establishing a minimum age of 16 or 18 for handlers? If so, please provide data to support either position.

## XII. Restrictions for Worker Entry into Treated Areas

### *A. Establish Minimum Age of 16 for Workers Entering a Treated Area under an REI*

1. *Overview.* The existing WPS does not establish age restrictions for workers entering a treated area under an REI. EPA proposes to prohibit any worker under 16 years old from entering a treated area under an REI. This proposal would include an exemption for persons entering a treated area under an REI covered by the immediate family exemption [see Unit XVIII.A].

2. *Existing WPS regulations.* The WPS establishes conditions for when a worker may enter into a treated area under an REI (40 CFR 170.112). The conditions are related to the type of work performed (often referred to as ''early-entry'' work) and the length of time the worker may be in the treated area. However, the WPS establishes no

minimum age for a worker sent into a treated area under an REI.

3. *Summary of the issues.* In 2009, Earth Justice petitioned EPA to expand the protections of children in agriculture (Ref. 78 p. 23). The petition referenced several studies suggesting negative health impacts on youth workers less than 18 years of age who had been exposed to pesticides (Ref. 78). These references linked pesticide exposure to childhood leukemia and delayed neurological development in youth (Ref. 78 p. 8). The CHPAC also recognized that ''growth and development of many organ systems continues into late adolescence'' and recommended that EPA enhance protection for workers in the 16–20 year old age group (Ref. 74 pp. 2–3).

4. *Details of the proposal/rationale.* EPA proposes to prohibit employers from directing workers under 16 years old to enter a treated area to perform early-entry activities while an REI is in effect. This prohibition would not apply to persons entering a treated area to perform early-entry activities while an REI is in effect on a farm owned by an immediate family member. To verify compliance with this requirement, EPA also proposes to require the agricultural employer to keep a record of the birth date of each worker trained. [See Unit VII.A.] While EPA believes that the proposed protections required for entry into a treated area during an REI would mitigate risks to the general worker population, concerns remain for children. Children may be more susceptible to pesticides because their systems are developing, so a level of exposure considered safe for an adult may not be safe for a child (Ref. 79 p. 51). See discussion in Unit XI.B.

Due to workers' low income, farmworker families may face more pressure to have children working in pesticide treated areas. EPA has particular concern for children working in a pesticide-treated area before the REI expires. As discussed earlier, the potential risk for pesticide exposure is elevated when a treated area is under an REI. EPA considered this elevated risk in combination with children's potentially greater susceptibility to pesticide exposure and developing decision-making capabilities, as well as the demographics of workers when developing this proposal. EPA believes this proposal is necessary to prevent unreasonable risks to children, taking into account the economic needs of farm worker families.

As discussed above, protections already exist under the FLSA for persons under 16 years old working with pesticides in agriculture. Extending these protections to those who enter a treated area during an REI could mitigate the potential effects of elevated pesticide exposure to children under 16 while their systems are still developing.

EPA recognizes that farm family parents are in the best position to make decisions about the types of activities in which their children can safely engage. EPA believes that persons performing early-entry tasks who are on an establishment covered by the immediate family exception would be adequately prepared and supervised by family members. Therefore, the minimum age requirement for early-entry workers would not apply to persons performing early-entry tasks when covered by the WPS immediate family exemption.

The proposed regulatory text concerning a minimum age of 16 for entering a treated area under an REI appears in § 170.303 of the proposed rule. The exception for persons covered by the immediate family exemption is found in § 170.301(a)(1)(i).

5. *Costs/Benefits.* EPA estimates the cost of requiring early-entry workers to be at least 16 years old would be $156,000 annually, or less than $1 per WPS establishment per year. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the benefits associated with this proposal; however, EPA is committed to protecting the health of children. EPA believes that imposing this requirement would reduce the number of children who suffer occupational pesticide-related illnesses, as well as the chronic and developmental effects that may be associated with children's exposure to pesticides.

6. *Alternative options considered but not proposed.* EPA considered a minimum age of 18 for workers to enter treated areas under an REI, with an exception for persons covered by the immediate family exception. Studies show that children's systems continue developing until they reach adulthood, increasing the potential for adverse outcomes from their exposure, as compared to adults. Additionally, data show children's maturity and comprehension are still developing (Ref. 77 p. 2). Early entry workers are exposed to pesticides before the REI has expired, meaning there may be higher levels of residues and more potential for exposure and negative health impacts. Early entry workers must use PPE properly and comply with additional measures to ensure they are protected from the higher potential risks. Adolescents may be less likely to comply with these measures and more likely to take risks that put their health at risk because their maturity and comprehension of risk are still developing.

EPA estimates the cost of this option would be about $723,000 annually, or about $2 per agricultural establishment. EPA does not have data to indicate that the anticipated additional protection for children support increased costs of the higher minimum age.

7. *Request for comment.* EPA specifically requests comment on the following question:

- Are there other ways EPA could protect children less than 16 years old from pesticide risks associated with entry into a treated area during an REI? If so, please describe.
- What would be the impact on state programs of establishing a minimum age for early entry workers?
- Would establishing a minimum age of 16 or 18 for early entry workers have an adverse impact on state requirements for certified applicators to be a minimum age, generally 16 or 18?
- Are there additional benefits or burdens with establishing a minimum age of 16? If so, please provide data to support this position.
- Are there additional benefits or burdens associated with establishing a minimum age of 18? If so, please provide data to support this position.

*B. Requirements for Entry During an REI*

1. *Overview.* The WPS establishes specific exceptions to the prohibition on sending workers into a treated area while an REI is in effect. Workers who enter pesticide-treated areas during an REI (known as ''early-entry workers'') without adequate protection may face an elevated risk from pesticide exposure. EPA proposes to require employers (1) to inform workers sent into a treated area while the REI is in effect of the specific exception under which they would enter, (2) to describe the tasks permitted and any limitations required under that exception, and (3) to explain the personal protective equipment required by the labeling. EPA also proposes to require the employer to create a record of the oral notification, to obtain the signature of each early-entry worker acknowledging the oral notification prior to the early entry, and to maintain the record for 2 years.

2. *Existing WPS regulations.* The WPS prohibits employers from directing workers to enter a treated area where an REI is in effect except under specific

early entry exceptions (40 CFR 170.112(a)). Recognizing some circumstances in which there may be a need to have work performed in a treated area during the REI, EPA established exceptions to the general prohibition for ''no-contact,'' ''short-term,'' and ''agricultural emergency activities'' (40 CFR 170.112). EPA later established two administrative exceptions that are not in 40 CFR part 170, for ''limited contact'' and irrigation activities (60 FR 21955; May 3, 1995) (60 FR 21960; May 3, 1995). Each exception requires specific protective measures or limitations on work to protect early-entry workers from unreasonable adverse effects from pesticide exposure. [For a complete discussion of the exceptions and proposed revisions, see Unit XII.D.] The WPS requires employers to provide workers with PPE, to assure that early-entry workers follow precautions listed on the label, and to provide water and decontamination supplies nearby for when the worker exits the treated area.

3. *Summary of the issues.* Farmworker Justice suggested that workers may not recognize the elevated risk from early entry or understand the requirements of the exceptions, and therefore may fail to appreciate the particular importance of complying with the terms of the early-entry exception. Farmworker Justice recommended that workers receive information about the health effects associated with the pesticides they may encounter while working (Ref. 35 p. 7).

4. *Details of the proposal/rationale.* In addition to what the WPS currently requires, EPA proposes to require that agricultural employers:

- Provide oral notification to early-entry workers prior to each entry into an area under an REI;
- Provide information (in addition to the current requirement to follow product labeling instruction) about the pesticide application, the specific task to be performed, and the amount of time that the worker is allowed to remain in the treated area;
- Collect written acknowledgement of receipt of the oral notification, including the date of birth, printed name and signature of each worker, prior to his or her entry; and
- Retain for 2 years the worker-signed record of this notification.

When entering a treated area during an REI, the worker faces risk of exposure to pesticides at concentrations with the potential for adverse health effects that are of specific concern. Evaluation of incident reports has demonstrated that workers who enter a treated area prior to the expiration of the REI are more adversely affected than those workers who enter the treated area after the REI has expired, suffering from respiratory issues, rashes, and other illness (Ref. 11). Results from a recent SENSOR-Pesticides/California Department of Pesticide Regulation analysis of the most common factors contributing to incidents of pesticide poisoning indicate that ''early reentry into a recently treated area'' was the second most common factor (Ref. 11). The report cites early reentry as contributing to 17% (336) of all acute pesticide poisoning cases for which a cause was identified in the agricultural industry between 1998 and 2005 (Ref. 11, p. 891).

EPA expects the proposed requirements to provide early-entry workers information about the pesticide application, the specific task to be performed, and the amount of time that the worker is allowed to remain in the treated area, and to obtain the early-entry worker's signature to increase the likelihood of those workers understanding and following the applicable risk mitigation measures and assure that workers have information about what early-entry activities they performed in the event they suffer a pesticide-related illness. Sending a worker into a treated area under an REI to perform specific tasks with the appropriate knowledge and equipment to protect him or herself decreases the likelihood that the worker would experience pesticide poisoning. Further, the proposed requirement to create and maintain a record to verify the oral notification would serve as a tool for inspectors to verify rule compliance.

This proposal would work in concert with two other proposed changes: requiring posting of treated areas [Unit VIII.] and enhancing the content of worker training [Unit VII.]. The Agency believes that training early-entry workers on what they should expect if the agricultural employer requests that they enter a treated area under an REI, as well as posting all areas treated with a product that has an REI of 48 hours or longer, would better prepare workers to protect themselves while performing early-entry tasks.

EPA is proposing to require recordkeeping of oral notification to early-entry workers, but not recordkeeping of oral notification of treated areas (discussed above in Unit VIII.A.6.ii.) based on the elevated risks facing early-entry workers and importance of ensuring they have the information necessary to protect themselves during the higher-risk early entry activities. Workers receiving general notification of treated areas do not need to know how long they may be in the area, types of exposure, or how best to protect themselves; they are instructed to keep out of specific treated areas. EPA believes that the burden on employers to create and maintain a record of the early-entry worker notification is balanced by the increased flexibility to employers, while ensuring sufficient protection for early-entry workers. As discussed above, EPA does not believe that the cost of creating and maintaining records of oral notification of pesticide-treated areas is outweighed by the potential benefits.

Additionally, the cost of creating and maintaining a record of oral notification for early entry workers is substantially lower than the cost of creating and maintaining a record of oral notification when the REI has expired.

The proposed regulatory text concerning early-entry requirements appears in § 170.305 of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of requiring employers to provide early-entry workers with oral notification would be about $700,000 annually, or about $2 per establishment per year.

EPA estimates the cost of requiring employers to maintain records of oral notifications provided to early-entry workers would be $470,000 annually, or about $1 per establishment per year.

For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the benefits associated with this proposal; however, EPA recognizes that entering a treated area during an REI is one of the primary identified sources of pesticide-related illness in workers. EPA believes this proposal would provide workers with more information about the risks they may face and how to protect themselves from pesticide exposure, and would ultimately lead to a reduction in the number of pesticide-related illnesses associated with early entry into a pesticide-treated area.

6. *Alternative options considered but not proposed.* Many of the alternative options considered are more fully discussed in other areas of this preamble. EPA considered the option of eliminating early entry for no-contact, limited contact, irrigation and short-term exceptions as recommended by worker advocacy organizations. [See Unit XII.D.] EPA also considered requiring agricultural employers to distribute pesticide hazard information to each worker upon entry into any treated area. [See Unit IX.A.]

EPA also considered requiring employers to keep records of the conditions of the exception claimed and notification to workers for 5 years instead of the proposed requirement of 2 years. Because most of the costs associated with recordkeeping are incurred upon creating the record, the incremental costs of retaining the records for a longer period are minimal. However, as discussed earlier, it is not clear that the potential benefits associated with retaining the records for a longer period justify the increased cost and burden on employers.

7. *Request for comment.* EPA specifically requests comment on the following questions:

• Is there other information related to entry into a treated area under an REI that EPA should require employers to document? If so, what information and why?

• Are there other ways EPA could verify that workers received notification and the proper equipment to work in a treated area under an REI without the proposed recordkeeping?

*C. Clarify Requirement for Decontamination Supplies for Workers Entering a Treated Area Under an REI*

1. *Overview.* The existing WPS requires employers to provide early-entry workers with ''a sufficient amount of water'' for decontamination. EPA proposes to clarify the meaning of ''a sufficient amount of water'' for decontamination of workers entering a treated area under an REI. EPA expects that the clarification would facilitate compliance and that adequate decontamination supplies would reduce the likelihood that workers would suffer an illness from the exposure during early-entry work and would protect worker families from take-home exposure.

2. *Existing WPS regulations.* The WPS requires the agricultural employers to provide ''soap, clean towels, and a sufficient amount of water so that the workers may wash thoroughly'' when workers perform tasks in a treated area while the REI is in effect (40 CFR 170.112(d)).

3. *Summary of the issues.* Farmworker Justice and state regulators have requested that EPA clarify what amount of water would be sufficient.

4. *Details of the proposal/rationale.* EPA proposes to require that agricultural employers provide at least 3 gallons of water per worker for decontamination after a worker has performed tasks in a treated area under an REI. This amount is based on the 1993 EPA guidance document, ''How to Comply with the Worker Protection Standard for Agricultural Pesticides: What Employers Need to Know.'' (Ref. 80 p. 25) EPA believes this amount of water would be sufficient for a worker to wash exposed areas. This is the same amount of water being proposed for handler decontamination. [See Unit XIV.A.]

The proposed regulatory text concerning the required amount of water appears in § 170.305(j) of the proposed rule.

5. *Costs/Benefits.* EPA estimates the cost of the proposal to increase the quantity of water available for early-entry worker decontamination would be $2,500 annually, or less than $0.01 per WPS establishment per year. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA expects that adequate decontamination supplies would reduce instances where workers fail to wash after performing WPS tasks owing to insufficient supplies, thereby reducing the likelihood that workers would suffer an illness from the exposure during early-entry work and would protect worker families from take-home exposure. EPA also expects that the clarification would make it easier for employers to understand and comply with the WPS decontamination supply requirements.

6. *Request for comment.* EPA specifically requests comment on the following questions:

• Is 3 gallons for decontamination a reasonable amount of water for an early-entry worker who has been exposed to a pesticide? If not, why?

• What amount of water would be reasonable, or what other alternative is there?

*D. Exception to the General Prohibition Against Sending Workers Into a Treated Area Under an REI*

1. *Overview.* The existing WPS includes specific exceptions to the employer prohibition against sending workers into a treated area during an REI. EPA proposes to clarify these exceptions to make them more understandable and easier for employers to follow.

2. *Existing WPS regulations.* The WPS prohibits employers from directing workers into a treated area while an REI is in effect (40 CFR 170.112(a)). The regulation also provides for exceptions to the entry restrictions so that certain activities considered critical to successful agricultural production can take place during an REI. The exceptions to the entry restrictions allow entry into an area under an REI for activities with no-contact, certain short-term activities, and certain activities associated with agricultural emergencies (40 CFR 170.112(b)–(d)). EPA added the exception provisions to the 1992 WPS to minimize potential adverse impacts on agriculture that could occur because of the restrictions on entering treated areas while an REI is in effect. The exceptions allow early-entry activities only under very limited circumstances. The exception provisions include specific requirements and limitations intended to ensure that workers are adequately protected during any allowed early-entry activities.

In addition, the WPS includes an administrative process to allow additional exceptions to the prohibition on early entry for activities critical to agricultural production that were not addressed in the existing exceptions (40 CFR 170.112(e)). In 1995, the Agency granted administrative exceptions for irrigation and limited contact activities. The rationale for and terms and conditions of these administrative exceptions were included in the final **Federal Register** notice announcing the Agency's approval of the request for the exceptions (60 FR 21955; May 3, 1995) (60 FR 21960; May 3, 1995).

3. *Summary of the issues.* In general, USDA has indicated support for revising the regulation to clarify the requirements of the exception to enable worker reentry without compromising human health. USDA said growers need maximum flexibility to direct workers to reenter treated areas to perform tasks in a timely manner (Ref. 81).

EPA received a letter signed by a broad coalition of farmworker organizations that opposed the inclusion of any exception to the prohibition on directing workers to enter a treated area while an REI is in effect (Ref. 35). They suggested that REIs should protect post-application workers by reducing their exposure to pesticides at a time when the residues are hazardous. Farmworker advocates noted that creating exceptions to the REIs substantially weakens this protection and increases the risk of injury to the workers, even if additional personal protective equipment is required and provided. Farmworker organizations asserted that many worker injuries occurred because workers were put back in the treated area before the REI had expired. They also indicated a belief that required PPE is often not worn because it interferes with workers' ability to perform their tasks in an efficient manner.

4. *Details of the proposal/rationale.* EPA agrees that some of the current exception provisions contain vague or unenforceable language that may be confusing to agricultural employers and the regulated community. Unclear regulations present compliance challenges for employers and, if misunderstood, may place early-entry workers at risk of being sent into treated areas to engage in tasks that should not take place during the REI.

Detailed descriptions of the proposed revisions and specifically related stakeholder input are discussed below.

i. *Clarify conditions of ''No Contact'' exception.*

a. *Existing WPS regulations.* The no-contact exception permits entry into a treated area under an REI for activities for which workers will have no contact with treated surfaces (40 CFR 170.112(b)). Examples of acceptable ''no contact'' activities include the following:

- Worker in an open-cab vehicle in a treated area where the plants and other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker;
- After a pesticide is correctly incorporated or injected into the soil, the worker is performing tasks that do not involve touching or disrupting the soil surface other than walking with shoes on the soil surface; and
- Worker in an enclosed cab vehicle in a treated area.

b. *Summary of the issues.* States and employers requested clarification from EPA on the conditions of the no-contact exception and what tasks constituted no-contact activities. Specifically, they suggested that wearing PPE to prevent contact with pesticide treated surfaces does not constitute no-contact early entry.

A coalition of farmworker advocate groups requested that EPA impose greater restrictions on the no-contact exception (Ref. 35).

c. *Details of the proposal/rationale.* The Agency proposes to clarify that activities reasonably expected to involve contact with treated surfaces cannot be no-contact activities, even if the contact is limited or mediated through the use of personal protective equipment. Wearing PPE reduces exposure to pesticide residues, but it cannot be relied upon to reduce exposure to the same level expected of a no-contact activity. Even with PPE, workers engaged in activities involving treated surfaces still face a risk of greater exposure than they would if they did not contact treated surfaces.

The proposed regulatory text concerning the no-contact exception appears in § 170.303(a) of the proposed rule.

d. *Costs and benefits.* EPA estimates there are no costs associated with this proposal since it is merely a clarification of the existing regulations.

ii. *Limit ''agricultural emergency'' exception.*

a. *Existing WPS regulations.* The current WPS permits early entry into a treated area during an REI in the event of an agricultural emergency. The emergency exception provision applies only where a state, tribal or federal agency having jurisdiction has declared the existence of circumstances that could cause an agricultural emergency to exist on the establishment. The existing exception allows early entry for an unlimited duration and does not prohibit hand labor activities. The agricultural emergency exception requires the employer to provide required PPE to all workers who engage in early entry activities.

b. *Summary of the issues.* State regulators, farmworker groups, and agricultural employers raised several concerns about the exception for agricultural emergencies (Ref. 82, p. 6). The primary issues concerned what constitutes an agricultural emergency, whether the state or tribe's lead agency for pesticide regulation is the only agency that can declare an agricultural emergency, which types of other agencies may be authorized to declare an agricultural emergency, and whether the lead agency may declare in advance conditions that would constitute an agricultural emergency.

EPA has provided guidance through the IGW policy document that any federal agency or state or tribal government may declare an agricultural emergency (Ref. 14). For example, the National Oceanic and Atmospheric Administration (NOAA) may do so indirectly by declaring that specific weather conditions could constitute an agricultural emergency. However, there are no recordkeeping or reporting requirements, so EPA has no data available regarding the number of times agricultural emergencies have been declared by states, tribes, or federal agencies.

A coalition of farmworker advocate groups requested that EPA impose greater restrictions on the agricultural emergency exception (Ref. 35).

c. *Details of the proposal/rationale.* EPA proposes to limit the organizations that can declare an agricultural emergency and to limit the time a worker can be in the treated area in an agricultural emergency exception when a product requiring double notification has been used.

Since issuing the IGW policy document, the Agency has come to doubt that agencies other than EPA and state or tribal pesticide regulatory agencies have the background and technical expertise to adequately assess the potential risks and benefits of early entry into pesticide treated areas during REIs, or that they fully understand FIFRA's statutory requirements to balance risks and benefits when establishing conditions for workers to enter treated areas while an REI is in effect. EPA therefore proposes to narrow the agricultural emergency exception so that only EPA, a state department of agriculture, or the state or tribal lead agency may declare an agricultural emergency under the WPS to allow early entry into pesticide treated areas during the REI. The Agency has particular concerns about the potential risks to workers entering areas under the agricultural emergency exception when the areas have been treated with a pesticide requiring double notification (i.e., products whose labeling requires both oral and posted notification of pesticide treatments because it presents a heightened risk to worker health). This is especially the case when, as noted above, the current agricultural emergency exception provides no time limits for worker entry and permits hand labor. EPA believes that, when such high toxicity double-notification products are used, the potential pesticide exposure and risk to workers engaging in hand labor activities during an REI is unreasonable.

EPA therefore proposes to limit the amount of time a worker is permitted to spend in an area treated with a double-notification product to no more than 4 hours in any 24-hour period during an agricultural emergency exception situation. EPA believes this change would preserve the needed flexibility for agriculture to address the conditions of the agricultural emergency while offering increased protections for workers potentially exposed to the most highly toxic pesticides. Even though an individual worker is limited to 4 hours of early entry under such a situation, an agricultural employer could rotate workers after each 4-hour interval.

The revised text for the agricultural emergency exception appears in § 170.303(c) of the proposed rule.

d. *Costs and benefits.* EPA estimates the cost for limiting the organizations that can declare an emergency and establishing a 4-hour time limit (in a 24-hour period) for entry into an area treated with a double-notification chemical under an agricultural emergency would be negligible.

e. *Request for comment.* EPA specifically requests comment on the following questions:

• Are there reasons EPA should consider eliminating the agricultural emergency exception?

• What benefits and drawbacks are associated with limiting the agencies that can declare an agricultural emergency?

• Please share any data on the use of the agricultural emergency exception, establishing a time limit, or other restrictions associated with exceptions.

• Should EPA develop guidance on the criteria for declaring an agricultural emergency and/or how a person or organization could request an eligible agency to declare an agricultural emergency?

iii. *Codify ''Limited Contact'' and ''Irrigation'' exceptions.*

a. *Existing WPS Regulations.* EPA established two administrative exceptions to the WPS prohibition against entry into treated areas during an REI for ''limited contact'' and ''irrigation'' activities. (60 FR 21955; May 3, 1995) (60 FR 21960; May 3, 1995) However, these administrative exceptions, including the terms and conditions of the exceptions, do not appear in part 170. The language in the existing administrative exception for irrigation activities states that the task must be unforeseen to meet the criteria for early entry.

b. *Summary of the issues.* Stakeholders, primarily state regulatory agencies, have raised concerns about the use of the term ''unforeseen'' in the exception (Ref. 36 p. 27). Irrigation is rarely an unforeseen event in most agricultural areas and it must take place to ensure crop survival. During the National Assessment meetings, state regulatory officials and other stakeholders noted that the need to irrigate is almost always foreseen, so the requirement for the need for irrigation to be unforeseen limits the legitimate use of the exception.

A coalition of farmworker organizations recommended that EPA eliminate the irrigation and limited contact exceptions (Ref. 35). Their recommendation was based on coalition members' belief that EPA underestimated the level of contact workers would have with treated surfaces and the potential for pesticide exposure through contact with treated surfaces.

EPA's FIFRA Scientific Advisory Panel said that data generated by the Agricultural Reentry Task Force and peer-reviewed by EPA have shown which activities may be classified as no and low contact activities that do not jeopardize the well-being of workers (Ref. 83).

c. *Details of the proposal/rationale.* EPA proposes to revise part 170 to codify the two current administrative exceptions for ''limited contact'' and ''irrigation'' activities. In addition, EPA proposes to remove the term ''unforeseen'' from the irrigation exception to make the text more accurately reflect field practices. Finally, EPA proposes to prohibit early entry under the limited contact and irrigation exceptions into areas treated with a pesticide requiring double notification (i.e., products whose labeling requires both oral and posted notification of pesticide treatments), owing to the higher potential for risks to workers' health.

EPA believes that incorporating these exceptions into the rule, rather than having them in separate **Federal Register** notices that employers may not be aware of, would increase the regulated community's awareness and understanding of the exceptions.

The proposed regulatory text concerning the ''limited contact'' and the ''irrigation'' exceptions appear in § 170.303(d) of the proposed rule.

d. *Costs.* EPA estimates there would be no costs associated with this proposal.

iv. *Eliminate provision for exceptions requiring Agency approval.*

a. *Existing WPS regulations.* The WPS permits persons or organizations to request the Agency to grant an administrative exception to entry restrictions specific to certain crops and activities and pesticide products (40 CFR 170.112(e)). This same type of process was used to develop the ''limited contact'' and ''irrigation'' exceptions discussed above.

b. *Details of the proposal/rationale.* EPA proposes to eliminate the administrative exception process. When the WPS was first promulgated, REIs for most pesticides subject to the WPS were established generically through the WPS labeling provision in 40 CFR part 156, and the administrative exception process was included in order to provide product-specific REIs. However, as a result of the Agency's pesticide reregistration efforts under section 4 of FIFRA, REIs are now established for each individual pesticide product through the registration or re-evaluation processes. Through these processes, the specific needs of crop production are considered in setting REIs for specific products and cropping practices. Accordingly, the Agency believes it is more appropriate that such requests for adjusted REIs be addressed through amendments to the registration of each specific pesticide product than as administrative exceptions to the WPS.

Additionally, by proposing to codify the existing administrative exceptions as permanent exceptions, the Agency believes that the current suite of available exceptions to the entry restrictions would provide agriculture with the needed flexibility to address the range of potential agricultural production problems that would warrant the need for an exception to the current entry restrictions. The Agency has not received any requests for new administrative exceptions in the last 15 years.

There is no proposed regulatory text associated with the removal of this provision.

c. *Costs and benefits.* EPA estimates there would be no costs associated with this proposal.

5. *Request for comment.* EPA specifically requests comment on the following questions:

• Do you have factual information about the current frequency of use of any of the exceptions? If so, please provide it to the Agency.

• What are the benefits and challenges of the proposed amendments to each of the exceptions?

• Are there other reasonable alternatives that EPA did not consider? If so, please describe and provide a rationale for their consideration.

• Should EPA consider a different time limit for the agricultural emergency exception? For other exceptions?

• Are there any drawbacks to adding the irrigation and limited contact exceptions into the rule?

• For all comments, please provide factual information in support of your assertions.

*E. Expansion of Entry-Restricted Areas*

1. *Overview.* The existing WPS establishes entry-restricted areas adjacent to the treated areas (i.e., adjacent to the areas where pesticides are actually applied) only in nurseries and greenhouses. EPA proposes to establish similar entry-restricted areas during applications on farms and in forests. EPA expects this change would result in reduced incidents of pesticide exposure to workers and other persons from unintentional contact during application.

2. *Existing WPS regulations.* The WPS requires agricultural employers to restrict nursery and greenhouse workers and other persons on those establishments from entry-restricted areas, defined as specific areas adjacent to those targeted for pesticide application (40 CFR 170.110). The size of the entry-restricted area depends on

the type of product applied and the application method. For example, if a pesticide is applied as a mist in a nursery, the rule prohibits the employer from directing any worker or other person from entering the area being treated and within 100 feet of the treated area in all directions from the nursery. The entry-restricted area applies only during application and is distinct from the REI, which limits entry into a treated area for a specific period of time after the application ceases.

Entry-restricted areas are also relevant to handlers and handler employers since the WPS prohibits handlers from applying pesticides in a manner that results in contact with workers or other persons (40 CFR 170.210(a)). The handler and the handler employer are responsible for ensuring that the pesticide application does not contact any person, which effectively requires the handler to cease or suspend application if any persons are in areas where contact is possible.

3. *Details of the proposal/rationale.* EPA proposes to apply to farms and forests the entry-restricted area requirements currently applicable to nurseries so that all production applications are subject to similar requirements. The proposed entry-restricted areas for farms and forests would range from the treated area alone to 100 feet beyond the treated area, depending on the type of product applied and the application method. Fumigation is one of the application methods covered by the entry-restricted area requirements. The proposed WPS entry-restricted areas would still be limited by the boundary of the establishment owner's property, as the establishment owner is subject to the current rule. For example, if the WPS requires the entry-restricted area to extend 100 feet in all directions from the treated area, but there is only 50 feet between the treated areas and the boundary of the owner's property, then the property line would be the extent of the entry-restricted area under the WPS. WPS entry-restricted areas are limited by the boundaries of the agricultural establishment to limit the employer's responsibility under the WPS to the people on his or her establishment. The Agency believes that the proposed creation of entry-restricted areas for all farm and forest applications would reduce risk to workers and other persons from pesticide exposure when they may be working in or nearby an area adjacent to an ongoing pesticide application. The proposed revisions would also provide more consistent protection across all establishments covered by the WPS.

The existing part 170 does not require entry-restricted areas beyond the actual treated area for farms and forests. A worker may be assigned to work in an area immediately adjacent to an area being treated with pesticides. Many incidents of drift and off-target application have resulted in reported worker illnesses. A recent study cited off-target drift as the leading cause of reported agricultural worker exposure incidents, with 1,216 individual worker pesticide exposures reported from 1998–2005 (Ref. 11 p. 891).

The proposed changes do not cover applications of soil fumigants or any other pesticides that have buffer zones intended to protect human health included on the product labeling. Where EPA has established entry-restricted areas for a specific pesticide or group of pesticides through labeling, the labeling-specific restrictions supersede the generic requirements of the WPS.

The proposed entry-restricted areas would complement the existing WPS requirement that prohibits handlers from applying pesticides in a way that results in contact with workers or other persons and the proposal that would require handlers performing an application to cease or suspend the application if workers or any persons are in the entry-restricted areas during application. The proposal also works in concert with the prohibition on the agricultural employer allowing or directing any worker or other person, other than an appropriately trained and equipped handler, to enter or remain in the treated area or any applicable entry-restricted area during application.

The proposed regulatory text concerning entry-restricted areas during applications on farms and in forests and outdoor nurseries appears in § 170.105(a) of the proposed rule.

4. *Costs and benefits.* EPA estimates the cost for restricting entry to areas adjacent to an area being treated would be negligible. There may be instances where worker tasks in these adjacent areas must be stopped until the application is complete, but EPA believes employers can generally reassign workers to other tasks for the duration of the pesticide application.

5. *Request for comment.* EPA specifically requests comment on the following questions:

- Is it reasonable for EPA to assume that workers can be reassigned for the duration of the pesticide application?
- Are there any burdens to applying an entry-restricted area on farms and in forests? Are there any other benefits?

## XIII. Display of Basic Pesticide Safety Information

### *A. Location of Basic Pesticide Safety Information Display*

1. *Overview.* The existing WPS requires employers to post a poster displaying basic safety information in a single location on the establishment. EPA proposes to require that the pesticide safety information also be displayed at the decontamination site(s).

2. *Existing WPS regulations.* The WPS requires agricultural and handler employers to display the pesticide safety poster at a central location on the establishment (40 CFR 170.135(d) and 170.235(d)).

3. *Summary of the issues.* Farmworker organizations recommended additional posting locations with the posted warning signs [see Unit VIII.] or at worker changing areas (Ref. 35) (Ref. 74). They noted that having the pesticide safety poster in multiple places where workers are likely to see it increases the chances for workers to absorb the messages and to know how to contact emergency personnel.

4. *Details of the proposal/rationale.* EPA proposes to require that employers display pesticide safety information at decontamination sites in addition to a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and can be readily seen and read. Adding the display of pesticide safety information to decontamination sites improves workers' and handlers' access to the self-protective and decontamination information. EPA believes that providing the pesticide safety information at the decontamination sites will not only remind workers and handlers about self protection but will also ensure that emergency contact information is immediately accessible at each decontamination site. It is likely that an exposed worker or a colleague providing assistance would visit the nearest decontamination site.

Agricultural employers have told EPA that they generally have a set of materials, sometimes on the back of a truck or on a mobile cart, for decontamination. Displaying the pesticide safety information on such an apparatus would not seem to impose significant additional burden. The current WPS requires employers to move the decontamination supplies to locations where workers or handlers are engaged in WPS activities. Once added, the pesticide safety information would move along with the decontamination supplies, imposing minimal additional burden on the employer.

The proposed regulatory text concerning the locations to display pesticide safety information appears in § 170.11(a)(3) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of requiring the basic pesticide information display at decontamination sites for workers would be $2 million, or about $5 per agricultural establishment per year. EPA estimates the cost of requiring the basic pesticide information display at decontamination sites for handlers would be $780,000, or about $2 per agricultural establishment per year. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA cannot quantify the benefits associated with this proposal. However, EPA believes that providing a reminder of basic hygiene principles at places where workers and handlers wash before leaving the treated area to eat and use the bathroom would increase the number of workers and handlers following proper decontamination principles. Emergency response information would have the maximum benefit if it is immediately available where workers and handlers would go for decontamination supplies. EPA believes that displaying pesticide safety information at decontamination sites would reduce the number of occupational pesticide-related illnesses.

6. *Alternative options considered but not proposed.* Farmworker organizations recommended two alternate options in addition to the current requirements for posting the pesticide safety poster: requiring the pesticide safety poster with all posted warning signs or requiring the pesticide safety poster at worker changing sites. Requiring that the pesticide safety poster be displayed wherever a warning sign is posted would impose significant burden on employers. The pesticide safety poster is much larger than the warning sign, so it would be difficult for employers to put up and take down the pesticide safety poster with the same ease as they handle the warning sign. In addition, because the poster is much less durable than the warning sign, EPA believes that employers would have to replace the poster periodically when the treated area has to be posted for more than a few days. EPA expects that employers would need to obtain multiple copies of the poster and would have to replace them frequently.

The WPS does not require employers to provide facilities for workers to change clothes. A requirement to place the pesticide safety poster at a site that may not exist at all establishments would not be practical or feasible.

For the reasons described above, EPA decided not to propose requirements for employers to display the pesticide safety poster with all posted warning signs or at worker changing sites. EPA believes that it is more important and practical for workers to review the pesticide safety poster at the site of the decontamination supplies, where they can be reminded of safety and hygiene principles while cleaning themselves after working in a treated area.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- What additional burden would employers face if the proposed option to require pesticide safety information to be displayed at decontamination sites is implemented? Would there be benefits to employers?
- Do data exist that show that access to information such as that on the pesticide safety poster at the same location as decontamination supplies leads to more workers adopting hygiene practices, thereby reducing the number of workplace illnesses?

*B. Content of Basic Pesticide Safety Information Display*

1. *Overview.* The existing WPS mandates specific content for the pesticide safety poster. EPA proposes to require additional information so workers and handlers can contact the state or tribal enforcement agency.

2. *Existing WPS regulations.* Under 40 CFR 170.135(b)(1) through (2) and 170.235(b)(1) through (2), the pesticide safety poster must include the following content:

- Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.
- Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.
- Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).
- Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.
- Wash work clothes separately from other clothes before wearing them again.
- Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.
- Follow directions about keeping out of treated or restricted areas.
- There are federal rules to protect workers and handlers, including a requirement for safety training.

The WPS also requires the employer to provide contact information for the nearest emergency medical care facility and to update workers and handlers if the information changes. EPA has developed a poster that complies with the requirements of the regulation (except for the site-specific information requirements) and makes it available to agricultural employers free of charge.

3. *Details of the proposal/rationale.* The Agency proposes to amend the basic pesticide safety content required to be displayed on an agricultural establishment to clarify the emergency medical information section, and to include contact information for contacting the state or tribal regulatory agency. The proposal no longer refers to a ''pesticide safety poster.'' Instead, the proposed regulatory text refers to ''pesticide safety information'' to allow some flexibility in how all the required information is displayed. EPA believes that most agricultural establishments will choose to use EPA's free pesticide safety poster to comply with the WPS pesticide safety information; EPA would update the poster to include the proposed changes to the information. However, the information does not have to be displayed as a poster as long as the display includes the required information and meets the requirements of the section.

Finally, the Agency proposes to require that the pesticide safety information display contain contact information for the state or tribal regulatory agency for pesticide enforcement. EPA believes that workers and handlers should have the opportunity to ask questions about protections offered by the WPS and to report pesticide exposure incidents or suspected non-compliance that may endanger them.

The proposed regulatory text concerning the additional required content of the pesticide safety information display appears in § 170.11(a)(1) of the proposed rule. The text concerning requirements when there are changes to the pesticide safety information appears in § 170.11(a)(2).

4. *Costs and benefits.* EPA estimates the cost to revise the contents of the basic pesticide safety information display would be $108,000 annually, or about $0.30 per WPS establishment per year. EPA included in this estimate the cost for employers to purchase the poster. However, EPA believes that many would obtain the updated poster free of charge from the Agency; as a result the actual cost of this requirement

may be lower. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

5. *Request for comment.* EPA specifically requests comment on the following questions:

• What additional burden would employers face if the proposed option to require pesticide safety information to be displayed at decontamination sites is implemented? Would there be benefits to employers?

• Should EPA consider other changes to content of the pesticide safety information display? If so, what changes and why?

## XIV. Decontamination

Unit XII discussed proposed decontamination requirements specifically for workers who enter a treated area in which an REI is in effect as part of a suite of proposed changes to the protections for early entry workers. This Unit discusses routine and emergency decontamination for workers and handlers. The proposals in this Unit would cover handlers and workers who are not entering a treated area in which an REI is in effect.

### *A. Clarify the Quantity of Water Required for Decontamination*

1. *Overview.* The existing WPS requires employers to provide water for decontamination. EPA proposes to clarify the quantity of water required for decontamination from ''enough water for routine washing and emergency eyeflush'' to a specific quantity.

2. *Current WPS regulations.* The WPS requires agricultural employers to provide decontamination supplies, including ''enough water for routine washing and emergency eyeflush,'' when workers are performing activities in areas where a pesticide was applied or an REI was in effect at any point in the last 30 days and come in contact with anything that has been treated with a pesticide (40 CFR 170.150). The WPS also requires handler employers to provide decontamination supplies, again including ''enough water for routine washing, for emergency eyeflushing and for washing the entire body in case of an emergency,'' for handlers (40 CFR 170.250). Part 170 does not specify how much would constitute enough water to meet the decontamination supplies requirement.

3. *Summary of the issues.* Agricultural employers have reported difficulty in ensuring that they provide an adequate amount of water because the amount of water needed for each worker or handler is not stated in the current regulation. When EPA implemented the WPS, state regulatory agencies requested that the EPA clarify the quantity of water necessary to satisfy the decontamination requirement. In guidance published in 1993, ''How to Comply with the Worker Protection Standard for Agricultural Pesticides: What Employers Need to Know,'' EPA recommended that employers provide 1 gallon of water per worker for routine decontamination and 3 gallons per handler for routine washing and emergency decontamination (Ref. 80, p. 25). This guidance was developed by experts from EPA's program and enforcement offices and state regulatory agencies. Further discussion about the amount of water required can be found in ''How to Comply with the Worker Protection Standard for Agricultural Pesticides: What Employers Need to Know.''

4. *Details of the proposal/rationale.* EPA proposes to require that employers must provide 1 gallon of water per worker for routine decontamination and 3 gallons of water per handler for routine washing and emergency decontamination. By codifying the guidance discussed above, EPA believes that employers would have no difficulty in determining the amount of water for routine and emergency decontamination required for their workers and handlers. This specificity would assist in providing workers and handlers with the amount of water necessary for routine washing and provide handlers with a sufficient amount of water should a pesticide emergency occur. Employers could be confident that they are complying with the regulation and keeping their workers and handlers safe in the event of an exposure by providing adequate supplies.

The proposed regulatory text concerning the required quantities of decontamination water appears in the proposed rule § 170.111(b) for workers and § 170.209(b) for handlers.

5. *Cost.* EPA estimates the cost of this proposal would be negligible because it is a codification of existing EPA policy interpretations of the WPS.

6. *Request for comment.* EPA specifically requests comment on the following questions:

• Is 1 gallon for routine washing for workers and 3 gallons for handler emergency decontamination, reasonable amounts of water for workers or handlers who have been exposed to pesticides? If not, why?

• What amount of water would be reasonable, or what other alternative is there?

• Would waterless cleansing agents used in lieu of soap, water, and towels effectively remove pesticide residues from workers' and handlers' hands? Should EPA consider allowing the employer to substitute waterless cleansing agents for the currently required decontamination supplies? If so, why? Please provide data on the efficacy of waterless cleansing agents for removing pesticide residues.

### *B. Eliminate the Substitution of Natural Waters for Decontamination Supplies*

1. *Overview.* The existing WPS permits employers to substitute clean, natural waters from springs, streams, lakes or other sources for contained water supplies at decontamination sites in specific circumstances. EPA proposes to eliminate the option to substitute clean, natural waters for the potable water required for decontamination. The proposal would allow the employer to supplement the required water supplies with clean, natural waters if necessary.

2. *Current WPS regulations.* The WPS allows employers to substitute clean waters from springs, streams, lakes, or other sources for decontamination at remote work sites if such water is more accessible than the water located at the nearest place of vehicular access (40 CFR 170.150 and 170.250). Generally, the WPS requires agricultural and handler employers to provide decontamination supplies no farther than one quarter mile away from where workers are working or from where handlers are performing handling activities. One exception to this requirement is that if worker and handler activities occur more than one quarter mile from the nearest point of vehicular access, soap, single-use towels, and water may be located at the nearest point of vehicular access, but the employer may allow workers or handlers to use clean water from springs, streams, lakes, or other sources if more accessible than the decontamination supplies.

3. *Details of the proposal/rationale.* The Agency proposes to eliminate the exemption that allows agricultural and handler employers to use clean, natural bodies of water in lieu of the required decontamination supplies. Employers would need to ensure that workers and handlers have access to sufficient quantities of potable water for decontamination; however, employers would be permitted to supplement the required quantities of potable water with natural waters in the event of an emergency. The Agency believes that vehicular access to worker and handler sites is common and not likely more than a quarter mile distance from the worker location. Modern agriculture is highly mechanized, and the Agency

believes that workers and handlers are routinely transported close to their work areas by vehicles.

EPA believes that workers and handlers would be better protected by ensuring access to the required amount of potable water for routine and emergency decontamination, and allowing the option to supplement those supplies with clean, natural waters in the event of an emergency.

4. *Costs and benefits.* EPA did not estimate the cost for this proposal because EPA believes that a negligible number, if any, employers would be impacted by this proposal. However, EPA has no data on the number of employers that may use this option and is seeking data below.

5. *Request for comment.* EPA specifically requests comment on the following:

- Please provide information on situations, if any, in which the proposed change would significantly increase the burden on agricultural employers and offer alternative proposals.
- Please provide any information on the cost associated with the current situation and proposed change.
- Would using natural waters for decontamination worsen a worker's or handler's situation after pesticide exposure?
- Would it be beneficial to use any water in the event of a pesticide emergency or when decontamination supplies cannot be located within one quarter mile because of limited vehicular access?

*C. Requirements for Ocular Decontamination in Case of Exposed Pesticide Handlers*

1. *Overview.* The existing WPS requires employers to provide a specific amount of water to handlers that they can carry for use in the event of an ocular pesticide exposure. EPA proposes to require employers to provide clean, running water at permanent (i.e., plumbed and not portable) mixing and loading sites for handlers to use in the event of an ocular pesticide exposure.

2. *Current WPS regulations.* The WPS requires handlers to carry water for eyewashing to use in case of an ocular exposure if the pesticide label mandates the use of eye protection (40 CFR 170.250). The handler employer must assure that 1 pint of water is available for each handler who is performing the tasks for which the pesticide label requires protective eyewear.

As discussed in Unit XIV.A., the WPS requires employers to provide water sufficient for handlers to perform routine decontamination in addition to the requirement discussed in this section to provide water for handlers' eye washing in case of an ocular exposure.

3. *Summary of the issues.* Farmworker Justice provided the Agency with information about several incidents of accidental ocular exposure (Ref. 36). They noted that even when handlers use the PPE required on the label, they may be accidentally exposed to the pesticide. For example, a pesticide may splash into a handler's eye even if he or she wears proper PPE. The eyes can suffer serious damage if exposed to certain pesticides. Farmworker Justice noted that the WPS requirement for 1 pint of water would not satisfy EPA's own current recommendations in the Label Review Manual, which calls for a person who suffers ocular pesticide exposure to ''hold eye open and rinse slowly and gently with water for 15–20 minutes'' (Ref. 84, pp. 7–12). In addition, the American National Standards Institute standard for eyeflushing calls for a sufficient quantity to rinse eyes continuously for 15 minutes (ANSI Z358.1–2009). Therefore, Farmworker Justice recommended that EPA adopt a standard for ocular decontamination more protective than the WPS's current one pint requirement.

4. *Details of the proposal/rationale.* In addition to the 1 pint of water already required to be carried by the handler, the Agency proposes to require that at permanent mixing and loading sites handler employers provide clean, running water sufficient to provide at a minimum of 1.5 liters (0.4 gallons) per minute for 15 minutes for handlers to use for eye flush purposes in the event of an ocular pesticide exposure. EPA expects that adopting this standard would improve the ability of handlers to mitigate damage to their eyes from accidental exposure. EPA expects that most permanent mixing sites are plumbed to facilitate the dilution of concentrated pesticides and to load application equipment and have the potential to provide clean water flowing at the appropriate rate to comply with this requirement. For those handlers who may be exposed while not working at the permanent mixing loading site, EPA believes the 3 gallons of water required for routine decontamination would provide 7.5 minutes of rinsing, sufficient to clear the eyes immediately at which point the handler can continue rinsing his or her eyes for the full 15 minutes at a permanent site.

The Agency based the proposed requirement on OSHA's standard for ocular decontamination. OSHA's requirement for general industry states, ''where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use'' (29 CFR 1910.151(c)). Based on the OSHA standard, the American National Standards Institute developed a water flow standard to address minimum operating requirements for an eye flush. These operating standards establish a minimum of 1.5 liter (0.4 gallons) per minute of flushing fluid, such as water, for 15 minutes (ANSI Z358.1–2009) (Ref. 85). Some states have required handler employers to provide ocular decontamination conforming to the OSHA standard. For example, Oregon implemented the same requirement proposed here in 2006 (OSHA 437–004–1305 K(5)). In FY 2007, Oregon reported 23 instances of non-compliance. By FY 2010, only 5 establishments were cited for non-compliance (Ref. 86, p. 6).

The proposed regulatory text concerning ocular decontamination for handlers appears in § 170.209(d) of the proposed rule.

5. *Costs and benefits.* EPA estimates that the cost of this proposal would be minimal because mixing pesticides at a permanent site generally involves substantial quantities of water and EPA believes that plumbed water is almost always available at those sites. EPA's proposal would not require employers to purchase a metered eyewash station; any water supply that meets the proposed standards would comply.

6. *Alternative options considered.* EPA considered requiring portable eyewash stations at all mixing or loading sites as an alternative to the proposed option. EPA believes that most establishments mix and load at various sites and may move from day to day. The cost of equipping each potential mixing or loading site (permanent and non-permanent) with a portable eye wash station would be about $14 million per year for agricultural establishments and commercial pesticide handling establishments.

As discussed above and in Unit XIV.A., handler employers are required to provide 3 gallons of water per handler for decontamination. EPA believes that if necessary, handlers could use this decontamination water for about 7 minutes at the recommended rate of 1.5 liter (0.4 gallons) per minute, which would give them time to get to a location with sufficient water to rinse their eyes for the recommended amount of time. EPA does not intend for the routine decontamination water to be used for emergency eyeflush on a regular basis. However, the Agency

believes that it is appropriate to consider the existing availability of clean water where the handler may be exposed as well as new requirements when considering alternatives to the current eyewash requirement. EPA believes that most handlers will have access to either a permanent mixing or loading site or to the routine decontamination water. EPA believes the benefits associated with a requirement to have a portable eyewash station at each mixing or loading site is not reasonable in comparison with the cost and alternatives available. Therefore, EPA decided not to propose a requirement for portable eyewash stations at all mixing or loading sites.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Is it reasonable to require that clean, running water be present and flowing at a minimum of 1.5 liter (0.4 gallons) per minute for 15 minutes at permanent mixing and loading stations? If not, why?
- Should EPA consider other ways to provide ocular decontamination for handlers? If so, please provide specific details, including rationale and cost.
- Do data exist on the relative number of mixing and loading activities that occur at permanent sites and away from permanent sites?
- Are there other ways in which ocular decontamination might reasonably be improved at temporary mixing and loading sites?

*D. Showers for Handler Decontamination*

1. *Overview.* The existing WPS establishes specific requirements for routine and emergency handler decontamination supplies, but these requirements do not include shower facilities. EPA considered but is not proposing adding a requirement for handler employers to provide shower facilities.

2. *Current WPS regulations.* As discussed above in Unit XIV.A., the WPS specifies the types and amounts of supplies handler employers must provide. The WPS does not require handler employers to provide shower facilities.

3. *Summary of the issues.* Farmworker organizations have requested that EPA require employers to provide showers for handlers to facilitate decontamination at the end of the work day. They suggest that the use of showers after pesticide handling activities could decrease pesticide exposure to handlers. Representatives of agricultural employers, the agricultural employers, and others from the SBAR panel process, noted that in their experience even when showers are available, handlers do not use them (Ref. 18, p. 21) (Ref. 87). Some stakeholders reported that many workers may be reluctant to shower at the workplace because they believe that showering immediately after work is detrimental to their health (Ref. 88).

As an alternative to imposing a requirement to provide showers, the SBREFA SERs suggested that EPA expand training for pesticide handlers to include how to minimize take-home exposure and how to use additional personal protective equipment (Ref. 18).

4. *Rationale for not proposing.* The Agency considered requiring showers but decided to not propose it because EPA believes that the additional training content for handlers (Unit VII.E.) and clarified decontamination provisions in Unit XIV.A., provide handlers with adequate information on how to reduce take-home exposure and sufficient supplies for routine washing.

5. *Costs and benefits.* EPA estimates that installing a shower on a single establishment would cost about $105,000. Nationally, this would cost about $22.7 billion dollars for construction. This estimate does not include future costs of maintenance. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Request for comment.* EPA specifically requests comment on the following questions:

- Is it reasonable to assume a significant percentage of handlers would not use a permanent shower facility at a worksite?
- Would increased handler training, clarified amounts of water for routine decontamination, and/or the use of additional PPE for handlers be sufficient to protect handlers and their families from occupational and take-home pesticide exposure? If not, why?
- Are there other preventative measures that would provide comparable protection to handlers and their families without incurring the same cost as requiring installation of shower facilities? If so, please describe the preventative measures, estimated cost, and implementation.
- What other alternatives exist?

## XV. Emergency Assistance

A. *Overview.* The existing WPS requires employers to provide ''prompt'' transportation to an emergency medical facility to workers or handlers who may have been exposed to pesticides. EPA proposes to require employers to make transportation to a medical facility available to workers and handlers within thirty (30) minutes of learning of the exposure. EPA also proposes to require the employer to provide to the worker or handler or to treating medical personnel the SDS and pesticide label, or all of the pertinent information in an alternate form.

B. *Existing WPS Regulations.* The WPS requires employers to make transportation available promptly to workers or handlers that have been ''poisoned or injured by exposure to pesticides'' (40 CFR 170.160 and 170.260). Employers must provide the following information, if available, to the exposed person or the treating medical personnel: name of the product, EPA registration number, active ingredient, medical information from the label, circumstances of the pesticide application (or the handling of the pesticide), and circumstances of the pesticide exposure.

C. *Summary of the issues.* State enforcement agents have reported to EPA that the vague timeframe has prevented them from verifying whether a worker was provided transportation to the medical facility in conformance with the WPS, and recommended that EPA adopt a more specific timeframe for transportation. They contend that the existing requirement is vague and leads to various interpretations of the timeframe. Without a formal definition of ''prompt,'' compliance and enforcement become more difficult for inspectors. In addition, varying interpretations of ''prompt'' could lead to conflict between employers, agricultural workers and handlers, and medical personnel about how quickly necessary information and transportation must be provided in an emergency situation.

Farmworker advocacy organizations have noted the difficulty in obtaining proper medical treatment for workers and handlers without all of the relevant information from the label and circumstances of the incident. Given the difficulty of diagnosing an illness or injury related to a pesticide exposure, treating physicians need information related to the pesticide products potentially involved and circumstances of the incident to initiate proper treatment. In addition, the sooner a person exposed to pesticides is transported for, and thus receives, treatment, the more likely the diagnosis and treatment will lead to a successful medical outcome. Farmworker advocacy organizations recommended that EPA require the employer to provide the information whether requested or not.

They also recommended adding an option for the employer to satisfy the requirement by providing the information in the current regulations, a copy of the label, or a copy of the SDS.

D. *Details of the Proposal/Rationale.* EPA proposes to require agricultural employers and handler employers to provide emergency medical assistance within thirty (30) minutes after learning that an employee has been poisoned or injured by exposure to pesticides as a result of his or her employment, replacing the current standard of ''prompt.'' The emergency medical assistance includes both providing the required information and making transportation to a medical facility available to the affected worker or handler. Although the intent of the proposal is for the injured party to receive medical attention as soon as possible, this requirement does not establish a timeframe for reaching the medical facility.

The proposal would require employers to provide to the worker, handler, or treating medical personnel information on each pesticide to which the worker or handler might have been exposed. The employer could satisfy this requirement by providing copies of both the SDS and the pesticide labeling. Alternatively, the employer could provide all of the following information: product name, EPA registration number, active ingredient(s), antidote, first aid, and any other medical treatment information from the label or the SDS. The employer would also be required to provide to the worker, handler, or treating medical personnel the circumstances of the pesticide application(s) or use(s) and the circumstances of the pesticide exposure.

Pesticide workers and handlers are instructed to wash their bodies and clothing immediately if they come into contact with a pesticide. The existing regulation requires agricultural employers and commercial pesticide handler employers to provide sufficient water and soap to workers and handlers for routine and emergency decontamination. In the event of a more serious illness or injury that requires immediate medical attention, however, it is critical for the worker or handler to be evaluated and treated quickly. When medical treatment is provided soon after the illness or injury, the effects of the pesticide exposure can be minimized. The longer the illness- or injury-causing exposure persists, the more likely the worker or handler will suffer more severe effects. EPA believes that requiring transportation and information about the pesticide(s) and circumstances of the exposure to be provided within thirty minutes after learning of the exposure would reduce the effects of pesticide exposure and improve the ability of the medical personnel to provide appropriate treatment.

EPA does not have data on the number of requests for information in the event of an accidental pesticide exposure by exposed persons or treating medical personnel. Medical personnel need relevant information to treat people who may have been exposed to pesticides. Treatment protocol varies by pesticide and type of exposure; for example, the recommended treatment for one pesticide may be to induce vomiting immediately, while for another pesticide this treatment could do more harm to the exposed person. Many of the recommendations for medical care listed in the ''Recognition and Management of Pesticide Poisoning'' manual depend on the time between initial exposure and medical treatment (Ref. 12). Some treatments are not effective unless provided within a specific timeframe of exposure (generally 1 hour). In addition, recommended treatments for different types of exposure vary and sometimes conflict with each other; therefore, it is essential that the medical personnel have as much information as possible about the likely pesticide(s) to which the patient may have been exposed in order to provide the proper treatment.

Amending the existing regulation to require provision of information relevant to the exposure circumstances and pesticide's properties would ensure that medical personnel are properly informed at the time of beginning treatment or soon afterward. With timely and proper treatment, many acute pesticide exposures may be mitigated before they cause more long-lasting effects.

Providing workers transportation to a medical facility in the event of a workplace injury is the responsibility of employers in almost all industries. OSHA requires that a worker injured on the job receive medical treatment, clarifying the requirement to mean within 3–4 minutes if the injury is life-threatening or 15 minutes if it is not life-threatening (29 CFR 1926.50(a)). OSHA requires employers in all industries to provide transportation for emergency medical assistance if it is not possible to use public services, for example, an ambulance (29 CFR 1926.50(e)). EPA recognizes the differences between agriculture and other industries. WPS establishments can be very large compared to the types of locations covered by OSHA standards, for example, factories, office buildings, and similar self-contained areas. Whereas the foreman or manager at a factory is likely to be on site or nearby at the time of an employee's injury, an agricultural or commercial pesticide handler employer could be significantly farther away. Based on the physical differences between a WPS establishment and typical industrial locations covered by OSHA, EPA believes it is reasonable to allow agricultural employers and handler employers a longer timeframe to reach an exposed worker or handler to provide transportation.

In developing this proposal, EPA was mindful of the demographics of the worker and handler populations. Some do not have their own vehicle and rely on an employer, co-worker, or labor contractor to provide transportation to and from the agricultural establishment. Some may not be able to secure transportation to a medical facility outside of working hours. The injured person may be too compromised to safely drive to the medical facility. Without a requirement for the employer to provide transportation, some workers and handlers might be stranded in the treated area or might wait longer than necessary or advisable to seek medical attention.

The regulatory text concerning emergency assistance appears in the proposed rule at § 170.9(f) for workers and handlers and at § 170.13(k) for handlers employed by a commercial pesticide handling establishment.

E. *Costs.* When compared to current practices, the Agency estimates the cost of complying with the proposed requirements to provide the information and to transport exposed workers or handlers within thirty minutes of learning of the exposure would be negligible. The Agency believes that many agricultural employers and commercial handler employers already meet this standard. Under other proposed changes, agricultural employers and commercial handler employers would be required to maintain copies of the SDS or pesticide label in an office for the workers to review. [See Unit IX.] Agricultural employers and commercial handler employers are also required to maintain copies of the application records. Providing these documents, copies, or information from them, would impose minimal additional burden on the employer. Agricultural employers and commercial handler employers are already required to provide transportation to a medical treatment facility for workers or handlers who are exposed to pesticides. Changing the timeframe for providing transportation from ''prompt'' to within 30 minutes is

a technical clarification and EPA believes it would impose minimal burden. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

F. *Alternative Options Considered but Not Proposed.* The Agency considered two alternative options to the timeframe for providing transportation. First, the Agency considered replacing ''prompt'' with ''immediate.'' Using ''immediate'' might convey the urgency of the situation and encourage agricultural employers and commercial handler employers to transport exposed workers or handlers as quickly as possible. However, this change would not address the vagueness in the regulation or impose a timeframe in which the agricultural employer or commercial pesticide handler employer must make available the proposed required information and transportation to a medical facility. Second, the Agency considered imposing a timeframe of one hour for the agricultural employer or commercial pesticide handler employer to make transportation available. Based on the guidance under OSHA for providing medical treatment to an injured employee, the Agency believes that an hour would be too long to allow a worker or handler to wait for transportation to a medical treatment facility to be made available to worker or handler.

G. *Request for Comment.* EPA specifically requests comment on the following questions:

- Is 30 minutes a reasonable timeframe for an agricultural employer or commercial handler employer to make transportation available to a worker or handler who has been exposed to pesticides to a medical treatment facility? If the timeframe is too long or short, please explain why. What would be a reasonable alternative?
- Do medical personnel treating a worker or handler for occupational pesticide exposure need more information than what is proposed to evaluate, diagnose, and treat the patient? If so, what additional information would be necessary?
- If time is of the essence in determining the proper course of treatment, should EPA consider requiring the agricultural employer to report the estimated time of the incident in addition to the information proposed above?

## XVI. Personal Protective Equipment

### *A. Chemical-Resistant PPE*

1. *Overview.* The existing WPS requires employers to provide ''chemical-resistant'' PPE in certain circumstances but does not provide a practical method for evaluating whether the material meets the standard. EPA proposes to clarify how to determine whether PPE is ''chemical-resistant.'' This clarification would ensure that compliance with the WPS chemical-resistant garment standard can be objectively determined and would provide appropriate protection to workers or handlers.

2. *Existing WPS regulations.* Under the WPS, ''chemical-resistant'' material means a ''material that allows no measurable movement of the pesticide being used through the material during use'' (40 CFR 170.240(c)(1)).

3. *Summary of the issues.* State agencies have informed the EPA that they cannot enforce the current standard. It can be difficult to determine, without significant and costly testing, whether a material is permeable to a pesticide. Inspectors noted that they cannot verify compliance at the time of a field inspection. Similarly, employers attempting to comply with the requirement face difficulty in determining whether a garment meets the criteria.

4. *Details of the proposal/rationale.* The Agency proposes to redefine ''chemical-resistant'' to mean that the PPE must be identified by the manufacturer as chemical resistant. EPA believes that PPE manufacturers will only identify items as chemical resistant if they provide a significant barrier to chemicals.

Changing from the current standard to one that requires the employer to provide PPE that the manufacturer calls ''chemical-resistant'' would allow employers and enforcement personnel a clear standard for determining compliance with the WPS.

The proposed regulatory text concerning chemical-resistant PPE appears in § 170.207(b)(1) of the proposed rule.

5. *Costs.* The estimated cost of this clarification is considered to be negligible. The EPA believes most employers currently purchase garments labeled as chemical-resistant for their employees.

6. *Request for comment.* EPA specifically requests comment on the following question:

- Are there alternatives to this proposal for determining chemical resistance of a garment that are both cost-effective and protective? Please provide details and any data that may apply.

### *B. Closed Systems*

1. *Overview.* The existing WPS permits exceptions to the label-specified PPE when using a closed system for certain handling activities. A closed system is an apparatus designed for mixing and loading pesticides that enables transfer of a pesticide from its original container into a new container, mix tank, or application equipment, while limiting the handler's exposure to the pesticide. But the existing WPS fails to provide specific criteria for an acceptable closed system, thereby limiting the practical availability and utility of the exception. EPA proposes to establish specific criteria for closed systems based on California's existing standard that would ensure protections for handlers, bystanders, and the environment during mixing and loading. EPA expects that this change would increase the number of establishments that use closed systems for pesticide mixing and loading activities because employers would have a clear description of the requirements on which to rely, thereby decreasing the potential for exposure.

2. *Existing WPS regulations.* The existing WPS provides only a description of a closed system as one that ''. . . enclose[s] the pesticide to prevent it from contacting handlers or other persons.'' Use of a properly functioning closed system that meets this description allows handlers to substitute the label-required PPE with alternative PPE when the system is used and maintained in accordance with the manufacturer's written operating instructions (40 CFR 170.240(d)(4)). The existing description does not adequately describe the specific characteristics of a closed system.

3. *Summary of the issues.* State regulators have reported problems with the ability to determine compliance with WPS requirements for closed systems. The current description lacks specific criteria for the characteristics necessary for a protective enclosed system, inhibiting the ability of inspectors to ensure that the system is in compliance. State regulators have asked EPA to establish practical, enforceable criteria for closed systems that will enable them to better determine which types of systems qualify for the exception.

California is the only state with specific closed system standards. The California Department of Pesticide Regulation requires applicators to use a closed system when handling products

with a signal word of ''Danger'' or ''Warning'' (Ref. 89). The closed system standards are required for liquid pesticides and may be used, but are not required, for other pesticide formulations. The definition of a ''closed system'' references a ''Director's Memo,'' which outlines the standards for closed systems (Ref. 90). The Director's Memo establishes the following criteria:

1. The liquid pesticide must be removed from its original shipping container and transferred through connecting hoses, pipes, and/or couplings that are sufficiently tight to prevent exposure of any person to the concentrate, use dilution, or rinse solution.

2. All hoses, piping, tanks, and connections used in conjunction with a closed system must be of a type appropriate for the pesticide being used and the pressure and vacuum of the system.

3. All sight gauges must be protected against breakage. Sight gauges must be equipped with valves so the pipes to the sight gauge can be shut off in case of breakage or leakage.

4. The closed system must adequately measure the pesticide being used. Measuring devices must be accurately calibrated to the smallest unit in which the material is being weighed or measured. Pesticide remaining in the transfer lines may affect the accuracy of measurement and must be considered.

5. The movement of a pesticide concentrate beyond a pump by positive pressure must not exceed 25 pounds per square inch (psi) of pressure.

6. A probe must not be removed from a container except when:

a. The container is emptied and the inside, as well as the probe, have been rinsed in accordance with item 8.

b. DPR has evaluated the probe and determined that, by the nature of its construction or design, it eliminates significant risk of worker exposure to the pesticide when it is withdrawn from a partial container.

c. The pesticide is used without dilution and the container has been emptied.

7. Shut-off devices must be installed on the exit end of all hoses and at all disconnect points to prevent the pesticide from leaking when the transfer is stopped and the hose is removed or disconnected.

a. If the hose carried pesticide concentrate and has not been rinsed in accordance with item 8, a dry break coupler that will minimize pesticide loss to not more than two milliliters per disconnect must be installed at the disconnect point.

b. If the hose carried a pesticide use dilution or rinse solution, a reversing action pump or a similar system that will empty the hose may be used as an alternative to a shutoff device.

8. When the pesticide is to be diluted for use, the closed system must provide for adequate rinsing of containers that have held less than 60 gallons of a liquid pesticide. Rinsing must be done with a medium, such as water, that contains no pesticide.

a. The system must be capable of spray-rinsing the inner surfaces of the container and the rinse solution must go into the pesticide mix tank or applicator vehicle via the closed system. The system must be capable of rinsing the probe, if used, and all hoses, measuring devices, etc.

b. A minimum of 15 psi of pressure must be used for rinsing.

c. The rinsing must be continued until a minimum of 10 gallons or one-half of the container volume, whichever is less, has been used.

d. The rinse solution must be removed from the pesticide container concurrently with introduction of the rinse medium.

e. Pesticide containers must be protected against excessive pressure during the container rinse operation. The maximum container pressure must not exceed five psi.

9. Each commercially produced closed system or component to be used with a closed system must be sold with:

a. Complete instructions consisting of a functional operating manual and a decal(s) covering the basic operation. The decal(s) must be placed in a prominent location on the system.

b. Specific directions for cleaning and maintenance of the system on a scheduled basis.

c. Information on any restrictions or limitations relating to the system, such as pesticides that are incompatible with materials used in the construction of the system, types (or sizes) of containers or closures that cannot be handled by the system, any limits on ability to correct or over measurement of a pesticide, or special procedures or limitations on the ability of the system to deal with partial containers.

*Operating Requirements:*

10. The system must be cleaned and maintained according to the manufacturer's instructions. If the system is not a commercially produced system it must be maintained on a regular basis. A record of cleaning and maintenance must be maintained.

11. All labeling required personal protective equipment (PPE) must be present at the work site. Protective eyewear must be worn while using a closed system that operates under pressure. While using a closed system, PPE requirements may be reduced or modified as provided in Title 3 California Code of Regulations, section 6738.

Information about closed systems which have been evaluated and found to meet these criteria is available from DPR (Ref. 91).

California's standard also allows for PPE to be modified or substituted when using a closed system that meets the established criteria.

4. *Details of the proposal/rationale.* EPA proposes to adopt the California closed system standards as outlined in the Director's Memo, except where there are specific references to California-specific information. The proposed criteria are based on research by the California Department of Pesticide Regulation. California has indicated that it is considering changes to the Director's Memo criteria. EPA will consider any changes made to California's standard and the supporting rationale when developing a final standard for closed systems in the WPS.

In addition to establishing standards for the system, the proposal establishes requirements for the use of the closed system. To be eligible for the exceptions to the label-specified PPE requirements when a handler uses a closed system, EPA proposes to require that the handler employer ensure that the handler receives training on use of the closed system, perform maintenance according to the manufacturer's written instructions, and maintain records of all maintenance for 2 years.

The proposed rule would retain the following current requirements: (1) Label-mandated PPE must be immediately available for use in an emergency; (2) handlers must use protective eyewear for closed systems that operate under pressure; and (3) a respirator must be worn if required by the label.

EPA believes that the existing WPS standard for closed systems, if applied strictly, may be difficult to meet and could limit the exception from being used because it requires that no pesticide escape during the transfer. As a result, some agricultural establishments may be forgoing the WPS closed system exception, despite the availability of closed systems that can be reasonably expected to meet the performance criteria. Additionally, other establishments may be employing systems that they believe qualify as closed, yet nevertheless expose handlers to elevated risk because the criteria for closed systems have not been adequately described. EPA is aware of

closed systems currently manufactured and available to agricultural and handler employers that meet the California closed system criteria.

EPA believes a properly designed and functioning closed system provides benefits to the pesticide handler, bystanders, and the environment. Studies show that PPE may be discarded if uncomfortable, such as when temperatures are high, or may be worn when contaminated or damaged, reducing its protective value. Additionally, PPE can only protect the wearer, but pesticide exposure to bystanders and the environment can be minimized through the use of a closed system. Industrial hygiene principles detail the use of the ''hierarchy of controls'' to manage chemical exposure. The hierarchy includes controlling chemical exposures from the source as a preferred approach, through substitution of a safer chemical or process, mechanizing the process, or isolating/enclosing the process. The use of closed systems fits this latter category by enclosing the chemical and substantially reducing the potential for exposure at the source, thereby reducing the potential for subsequent exposure to handlers, other people, and the environment.

Closed systems are considered an important protection against hazards in other industries. For example, health care workers working with hazardous drugs can experience exposures to those drugs that can result in illness. In 2004, CDC–NIOSH published an alert to healthcare workers, identifying the risks of exposure to these drugs (Ref. 92). The alert recommended a closed system drug transfer device (CSTD) to reduce exposure. CDC–NIOSH defines a CSTD as a system that ''mechanically prohibits the transfer of environmental contaminants into the system and the escape of hazardous drug or vapor concentrations outside the system,'' thereby limiting the occupational exposure to a healthcare provider (Ref. 92).

The proposed rule would replace the current performance standard with a set of specific criteria that a closed system would be required to meet. Because it will be easier to demonstrate compliance with these criteria, EPA expects this proposed revision to increase the number of establishments that use sufficiently protective closed systems for pesticide handling tasks involving mixing and loading, thereby reducing the potential for handlers and others to be exposed to pesticides during such activities.

The proposed regulatory text concerning closed systems appears in § 170.307(d) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of the proposed standards for closed systems would be $6.9 million annually, or about $25 per agricultural establishment per year and about $48 per commercial pesticide handling establishment per year. The cost estimate is based on conservative estimates of the number of establishments that currently use closed systems. EPA believes that some establishments that currently use closed systems that do not meet the proposed standards would upgrade and some would elect not to use a closed system, reverting to the label-required PPE. The Agency is not aware of sources of information that provide estimates of the number of establishments that use these systems for pesticide handling. Therefore, EPA has made assumptions about their numbers. The Agency believes these assumptions are conservative and that the actual cost of implementing this clarification of the requirements would be significantly lower.

The proposed requirement would not require employers to use closed systems if they have not already chosen to use closed systems in their operation, but will allow more flexibility for employers to use a broader range of closed systems. EPA believes that more closed systems will now be able to meet the criteria for the exception because it is proposing to replace language that implies a complete prohibition of exposure with more practical criteria that will enable more closed systems to meet the requirements for the exception. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Alternative options considered but not proposed.* The Agency considered eliminating the exception for closed systems based on reports of improper uses of the closed system exception. However, EPA expects that properly defined and employed closed systems afford superior protection for handlers, other individuals, and the environment. In order to support the use of properly designed and operated closed system, EPA instead proposes to clarify the WPS criteria for closed systems.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are the proposed standards for closed systems reasonable and achievable?
- Are the proposed standards for closed systems too specific? If so, please describe what aspects are too specific, why, and how to achieve sufficient protection while reducing the specificity.
- Do data exist on the number of establishments that use closed systems, the number that do not use closed systems because the current standard is not clear, and/or the number of establishments that use closed systems that meet the California criteria?
- Would people who currently use closed systems that do not meet the proposed standard upgrade their closed system or opt to use the label-required PPE? What information would impact this decision?
- What would be the cost to convert an existing system that does not meet the proposed standard to one that does?
- Should EPA consider eliminating any of the criteria listed in the proposal? If so, which criteria and why?
- What would be the benefits and draw backs of the requirement for the closed system to triple rinse the container? Is the technology available to provide this element at a reasonable cost?
- Would it be possible for agricultural and handler employers, handlers, and inspectors to measure the closed system's PSI while the system is in use? If it would not be possible, should EPA consider eliminating this element?

*C. Contaminated PPE*

1. *Overview.* The current WPS requires employers either to clean or properly dispose of contaminated PPE. EPA proposes to require that contaminated PPE be rendered unusable before disposal.

2. *Existing WPS regulations.* The WPS requires employers either to clean contaminated PPE or to dispose of it properly (40 CFR 170.240(f)). PPE can become contaminated with pesticides from routine use or spills, and if re-worn, can expose the wearer to those pesticide residues.

3. *Summary of the issues.* State agencies have raised concerns that contaminated PPE may be reused if not destroyed.

4. *Details of the proposal/rationale.* EPA proposes to require employers to render unusable before properly disposing of PPE that cannot be decontaminated according to the manufacturer's instructions. This would protect workers, handlers and others from unnecessary exposure resulting from the wearing of contaminated garments. For example, if absorbent coveralls contaminated from overuse or soaked in pesticide from a spill are

accidentally placed in a laundry bin instead of the trash bin, a person in need of protective clothing may find the discarded garment and attempt to wear it. Cutting the garment apart would make it less likely that a person would attempt to wear it and be exposed to the pesticide residues.

The proposed regulatory text concerning rendering PPE unusable before disposal appears in § 170.207(d)(2) of the proposed rule.

5. *Costs and benefits.* The cost of this proposal is expected to be negligible, because employers are required to dispose of contaminated PPE under the existing requirement. There is expected to be minimal additional burden on the employer to render the PPE unusable. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Request for comment.* EPA specifically requests comment on the following question:

• Are there better ways to mitigate the risks associated with reuse of discarded PPE? Please provide rationale and data, as applicable, with your response.

*D. Eyewear Protection for Open Cockpits*

1. *Overview.* The existing WPS allows pilots applying pesticides from an open cockpit aircraft to substitute a visor for label-required eye protection. The Agency proposes to replace the option to use visors in open cockpit aerial applications with the option of using a helmet with the face shield lowered as a substitute for the eye protection required on the label. EPA expects this proposal would balance the needs for adequate eye protection and suitable visibility among handlers that apply pesticides aerially from open cockpit aircraft.

2. *Existing WPS regulations.* 40 CFR 170.240(d)(6)(ii) requires that pilots applying pesticides from an open cockpit wear PPE in accordance with the label but allows pilots to substitute a visor for label-required eye protection. Depending on the particular pesticide product, the label-required eye protection might be goggles; a face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

3. *Details of the proposal/rationale.* The Agency intended the existing open cockpit exception to relax certain PPE requirements, but EPA nevertheless intended to convey that some covering extending over the eyes was necessary. While a face shield might be characterized as a visor, the term can also reasonably be interpreted as the brim of a cap that provides the eyes shade and protection from rain, but little other protection. Such a visor does not provide meaningful protection against pesticide sprays or spills. This protection is especially important for pilots applying in an open cockpit because they may be exposed to drift while making aerial applications. In order to assure aerial applicators have adequate eye protection, the Agency proposes to replace the option to use visors in open cockpit aerial applications with the option to use a helmet with the face shield lowered.

The proposed regulatory text concerning eyewear protection for open cockpits appears in § 170.307(f)(2) of the proposed rule.

4. *Costs and benefits.* EPA expects this proposal to have negligible costs because the pesticide label already mandates that employers provide specific PPE. This proposal merely changes the option for what PPE can be substituted for the label-mandated PPE. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

5. *Request for comment.* EPA specifically requests comment on the following question:

• Is the estimate of the cost reasonable? Please provide rationale and data to support your information.

*E. Respirators: Fit Testing, Training, and Medical Evaluation*

1. *Overview.* The existing WPS requires handler employers to ensure that handlers' respirators fit correctly. EPA proposes to clarify this requirement to expressly include medical evaluation, fit testing, and training for respirator users. In addition, EPA proposed to require that handler employers retain records of compliance with these requirements. EPA expects that these changes will result in fewer incidents of exposure and improvements to the health of respirator-wearing handlers covered by the WPS.

2. *Existing WPS regulations.* The WPS requires handler employers to ensure that each handler's respirator fits correctly (40 CFR 170.240(c)(9)). However, part 170 does not provide specific details on how to ensure that a respirator fits properly, conducting medical evaluation, periodically refitting the handler for respirator use, training requirements for proper use of respirators, or retaining fit test records.

3. *Summary of the issues.* The CHPAC, a Federal Advisory Committee, and Farmworker Justice noted that OSHA's standards for respirator fit testing, training, and medical monitoring are absent from part 170 and recommended incorporating the OSHA requirements (Ref. 74) (Ref. 35, p. 2). They expressed concern that the level of protection for handlers using respirators under the WPS requirements is inadequate.

4. *Details of the proposal/rationale.* EPA proposes to require handler employers to comply with the respirator fit testing, training, and medical evaluation requirements set by OSHA at 29 CFR 1910.134 whenever a respirator other than a dust or mist filtering mask is required by the labeling. The OSHA standard includes a specific standard for fitting a user for respirator use, training on recognizing when the respirator seal may be broken, and what steps to take to properly use and maintain respirators. OSHA also requires respirator users to be medically evaluated to ensure the respirator use does not cause undue stress on their bodies. The adoption of the OSHA standard into part 170 would ensure that handlers understand how to wear respirators properly, are medically fit to use respirators, and receive training on respirator use. It would also ensure that if technology advances lead OSHA to amend its standard, the change would automatically apply to pesticide uses subject to the WPS as well. EPA believes this proposal would better protect handlers from respiratory hazards. This requirement would be limited to products covered by the WPS.

In order for respirators to provide the intended protection, they must be fitted to the specific user. Fit testing ensures that the respirator seals completely on the face. Respirator wearers must be able to recognize when the seal is broken so that they may correct the fit or remove themselves from the exposure area.

The respirator wearer's respiratory system can be stressed because intake of breath is more difficult while wearing a respirator. For example, persons with medical limitations may be at risk of cardiac problems from the stress of the additional effort to inhale. Other potential negative impacts for respirator wearers include stress on the pulmonary system and even claustrophobia (Ref. 93). These potential negative health impacts can be avoided by doing a fit test of the respirator and if necessary, a medical evaluation.

In other industries where respirators are required for work around hazardous chemicals, OSHA requirements ensure that users wear them appropriately. Because pesticide use in agriculture is

outside of OSHA's scope [see Unit IV.D.], handlers of pesticides who use respirators are not protected to the same degree as workers in other industries although they face similar risks. Handlers can be exposed to significant inhalation risks during pesticide mixing, loading, and application.

EPA believes incorporation of the OSHA standard will provide employers and handlers with more specific information on what it means to ensure that a respirator fits correctly and ensure that respirators are maintained properly to protect handlers.

The proposed regulatory text concerning respirator use requirements appears in § 170.207(b)(9) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost to employers of complying with the clarification of the WPS respirator requirements to reference the OSHA standard would be $10.6 million annually, or about $54 for agricultural establishments per year and $3 for commercial pesticide handling establishments per year. The cost to commercial pesticide handling establishments only reflects the cost of recordkeeping because EPA assumes that they already comply with OSHA's respirator requirements because they engage in activities outside of the scope of the WPS that are covered by OSHA. EPA believes the cost estimates for agricultural establishments are very conservative because EPA believes that many establishment owners already are required to comply with OSHA requirements related to respirator use for other reasons. This proposal clarifies the existing requirement, which requires employers to ensure that handlers' PPE fits properly and to perform proper maintenance.

EPA cannot quantify the benefits associated with this proposal. However, EPA believes ensuring that handlers can safely use respirators and those respirators fit properly would increase effectiveness of the protections offered by respirators. This would ultimately lead to a reduction in occupational pesticide-related illnesses.

6. *Alternative options considered but not proposed.* The Agency considered amending 40 CFR part 156, which addresses labeling requirements, to require respirator fit testing, training, and medical evaluation requirements in accordance with OSHA standard 29 CFR 1910.134 on all labeling for pesticide products that require respirators other than filtering face pieces or dust masks. This proposal, however, would go beyond the scope of the WPS rule amendments, which focuses on agricultural pesticide use. Implementing this option would require changes to all pesticide labeling with respirator requirements and would likely take over three years to implement, based on necessary rulemaking for all labeling and the process for realizing changes on labeling of products in the field. The relabeling process would significantly delay protections to handlers. EPA may consider whether to take this action independently from the changes proposed in this proposed rule.

The Agency also considered the option of only establishing these requirements on individual WPS product labeling, on a product-by-product basis. Some proportion of the products covered by the WPS may already have these requirements on their labeling. For those products that lack the requirements, EPA recognized that it may take significantly longer for these protections to be added to labeling, and so opted to propose the revisions in part 170, where adherence to the OSHA standard would have the legal effect of labeling instructions without the need for re-labeling.

## XVII. Monitoring Handler Exposure to Cholinesterase-Inhibiting Pesticides

1. *Decision Not to Propose.* EPA considered proposing cholinesterase (ChE) monitoring of handlers to support mitigation of handlers' exposure to ChE-inhibiting pesticides. Currently, part 170 has no requirement to monitor ChE levels in workers or handlers. EPA believes that its product-specific risk assessment and registration process described in Unit III establishes adequate protections for handlers from undue risk of pesticide exposure. Additionally, other proposed changes proactively address some of the risks to handler health that have been identified by state-based ChE monitoring programs. The Agency does not believe that the anticipated benefits of a ChE monitoring program would justify the costs to handlers and employers and would be reactive, catching incidents after they occur rather than working to stop them from happening. Therefore, the Agency is not proposing to add a requirement for monitoring ChE inhibition in handlers at this time.

2. *Background.* ChE refers to a family of enzymes that are critical to proper nerve function in insects and humans. ChE permits the transmission of signals across the space between the nerves called the synapse. ChE-inhibiting pesticides block the transmission of these signals, resulting in adverse symptoms. Acute poisoning symptoms include nausea, dizziness, shortness of breath, fatigue, excessive salivation, and, in extreme cases, death. Except in severe cases, the treatment for persons who have been exposed to ChE-inhibiting pesticides usually involves removal from the work activities that result in the exposure.

Organophosphate (OP) and N-methyl carbamate (carbamate) pesticides, which are widely used in agriculture, are known inhibitors of ChE levels in humans. The OPs and carbamate pesticides that present the highest acute toxicity are in EPA's Toxicity Categories I and II, indicated by the signal words ''DANGER'' and ''WARNING'', respectively, on the product's label. Tests for ChE depression exist only for these types of pesticides; therefore, the development and implementation of a monitoring system would only provide information related to the use of a small subset of products, not a general workplace hazard monitoring program.

An individual's ChE level can be determined with a blood test. There is no universal normal range for ChE levels because baseline levels vary widely between individuals; therefore, it is important that an individual's initial baseline level be established before exposure to ChE-inhibiting pesticides. Comparison of this baseline level to the ChE level from the handler post-exposure can determine the level of inhibition.

Stakeholders have recommended ChE monitoring for handlers. In a 2006 letter to the Administrator, Farmworker Justice recommended medical monitoring of pesticide handlers who mix, load or apply Toxicity Category I or II OPs or carbamates for 30 hours or more in a 30-day period (Ref. 35).

Some states, including California and Washington, have adopted rules to require ChE monitoring. EPA reviewed California and Washington State's ChE monitoring rules when considering ChE monitoring on a national level.

Established in 1974, the California Department of Pesticide Regulation program requires monitoring for handlers of OPs and carbamate products with the signal word ''DANGER'' or ''WARNING'' on their labels (Ref. 94 p. Section 6728). For handlers who work with the types of pesticides listed above for more than 6 days in a 30-day period, California's regulations require that employers have the handlers tested to establish baseline ChE levels and to monitor any change after handling activities. Employers must retain records of handler activities related to these pesticides as well. To avoid the expense of sending a handler for blood testing, California believes that many employers limit handlers' exposures to these pesticides to less than six days in a 30-day period.

Washington State's Department of Labor and Industries established a voluntary ChE monitoring system for handlers in 2004. Employers must offer the option of monitoring to the handlers, who may decline after they have received training on the hazards posed by ChE inhibition and a consultation with a health care practitioner. In addition, for handlers who use Toxicity Category I or II OP or carbamate pesticides, employers must:

- Record the number of hours employees spend handling these pesticides.
- Implement a medical monitoring program for handlers who could meet or exceed the handling threshold of 30 or more hours in any consecutive 30-day period.
- Identify a medical provider to provide medical monitoring services.
- Make baseline and periodic ChE testing available to employees who could meet or exceed the handling threshold.
- Investigate work practices when a handler's red blood cell (RBC) or serum ChE level drops more than 20 percent below the employee's personal baseline.
- Remove employees from handling and other exposures to organophosphate and N-methyl-carbamate pesticides when recommended by the health care provider.
- Provide training on ChE monitoring to covered employees.
- Report employee handling hours to the medical provider with each periodic test.
- Maintain medical monitoring and other records for seven years (Ref. 95).

For those handlers who opt for monitoring, the rule also requires that handlers with red blood cell ChE depressions of greater than 30% or serum depressions greater than 40% from their personal baseline be removed from handling the listed pesticides until the handler's ChE levels have returned to within 20% of his or her personal baseline and that the employer conduct a work practice investigation.

Washington State provides reimbursement to agricultural employers for testing services and related administrative program costs. In 2009, Washington State reimbursed 61 employers with $129,000 of costs (Ref. 96 p. 3). The reimbursement costs included baseline testing for 2,060 handlers and at least one additional test for 249 of the handlers who had a baseline test (Ref. 96, p. 3).

Washington State's Department of Labor and Industries ChE monitoring Cost Benefit Determination and Small Business Impact Statement identified the following benefits of ChE monitoring:

- Prevention of illness after over-exposure.
- Increased hazard awareness and improve workplace safety related to pesticide use.
- Improved pesticide illness diagnosis and reporting.
- Greater certainty about frequency of pesticide over-exposure.
- Decreased risk of unintended exposures to handlers' families.

3. *Details of decision not to propose.* After reviewing the experiences of Washington State and California, as well as the estimated costs of a national ChE monitoring program, the Agency has decided not to propose establishing a ChE monitoring program for handlers. EPA believes that the existing risk assessments and label-based risk mitigation measures, in combination with the proposed changes to expand handler training and to adopt OSHA respirator standards, would be sufficient to prevent unreasonable adverse effects to handlers working with OPs and carbamates.

The Agency believes that Washington State's efforts have identified the primary reasons for ChE inhibition among pesticide handlers. In Washington State, the Department of Labor and Industries conducts follow up investigations when monitoring indicates ChE inhibition is greater than 20%. Review of pesticide worker protection programs highlighted potential exposure scenarios and violations of the WPS requirements including areas such as decontamination, PPE, and respiratory protection (Ref. 97). The findings from the follow-up suggest that in many cases ChE depression was caused by handlers not following basic safety and hygiene procedures, e.g., not wearing the label-required PPE and failing to wash before meals or bathroom breaks (Ref. 97, pp. 10–11). Additionally, several handlers, who did wear respirators as required by labeling, had beards, which compromised the seal between the face and the respirator and reduced the protection intended to be afforded by the equipment. Using this information, Washington State developed training for handlers specifically on decontamination and proper use of PPE.

This proposed rule would address Washington State's findings by requiring expanded handler training that covers reducing take-home exposure, proper use and decontamination of PPE, and more frequent handler training. [See Unit VII.E.] The Agency is also proposing requirements for fit testing and training on proper respirator use for handlers. [See Unit XVI.E.]

As a result of the reregistration process for the OPs and carbamates, revised labeling with increased protections is replacing the older labeling in the field. EPA expects that many of the new mitigation measures will result in lowered handler exposure. Key improvements include requirements for closed system mixing and loading, additional PPE, and reductions to rates of application and number of annual applications permitted. Moreover, the uses of some highly acutely toxic OPs are being phased out (Ref. 98). EPA recognizes that some products with the most current label language have not yet reached field users. For example, in the first years (2004 and 2005) of the Washington State program, many applicators were not wearing respirators when applying the OP pesticide Lorsban via air blast (Ref. 99) (Ref. 100). Inspectors learned that applicators were still using old product and the corresponding labeling, which did not require respirator use for handlers. This use resulted in higher exposure to the pesticide handlers as a result. EPA expects that as product labeling with additional risk mitigation measures reaches the field handlers complying with the new requirements would have a lower potential for exposure.

EPA believes that product-specific risk mitigation measures combined with increased handler protections outlined in this proposal would appropriately address the elevated potential for ChE inhibition in handlers. Moreover, the training and PPE elements of the proposed rule are expected to have the combined effect of providing important protective benefits to all pesticide handlers through increased knowledge of exposure risks and prevention strategies, ultimately leading to a reduction of pesticide exposures. EPA favors this approach over ChE monitoring because it prevents handler exposure rather than addressing it after it occurs. EPA does not believe that the cost and burden of implementing a national ChE monitoring program, which would only identify a problem after the exposure has occurred, would be justified by the limited benefits achieved by removing a handler from the treated area once pesticide exposure has inhibited ChE levels.

4. *Costs and benefits.* In 2003, Washington State developed a Benefit-Cost Determination document to estimate the costs of implementing their ChE monitoring program. The central estimated compliance cost in year one was $848,490, and $1,272,487 in year

two (Ref. 101 p. 23). The costs for which employers can be reimbursed under Washington's program include medical (consultations, follow-up visits and procedures, and blood draws), recordkeeping to record handling hours for monitored handlers, wages for time spent in training for ChE monitoring, and mileage for travel costs associated with evaluations and training. The expenses for which employers are reimbursed by Washington State provide insight as to the costs and activities of the employers and handlers participating in the ChE program, but do not estimate the cost of a national ChE monitoring program.

In the proposal's ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' the incremental cost of a monitoring program, based primarily on California's and Washington's programs, is estimated to be $15.2 million annually, or about $53 per agricultural establishment per year and $120 per commercial pesticide handling establishment per year. The requirements of a national ChE monitoring program have not been developed sufficiently to provide a precise cost analysis, but it would likely include program components such as training, recordkeeping, clinical testing, and field investigations. The estimated costs do not include the states' costs to build infrastructure to support ChE monitoring or to cover continued laboratory costs such as equipment maintenance and administrative support.

For more discussion of the costs of the proposal, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

The proposed handler training and PPE requirements are proactive and are expected to prevent handler exposure whereas cholinesterase monitoring would only identify a problem after the exposure has occurred. As a result, EPA concludes that the cost of implementing a national cholinesterase monitoring program is not justified by its limited benefits for a subpopulation of the nation's pesticide handlers. The training and PPE elements of the proposed rule, however, are expected to have the combined effect of providing important protective benefits to all pesticide handlers through increased knowledge of exposure risks and prevention strategies, ultimately leading to a reduction of pesticide exposures.

5. *Alternative options considered.* EPA considered restricting the number of hours handlers may work with OPs and carbamates in a given timeframe (for example, no more than 30 hours of handling these pesticides over a 30-day period). However, EPA is not aware of data that would provide a basis for establishing this type of proposal.

6. *Request for comment.* EPA specifically seeks feedback on its decision not to propose a requirement for mandatory ChE monitoring, including comment on the following questions:

- Do you believe the costs and burdens of a national ChE monitoring program would be justified by the protections to handler health? If so, please provide justification.
- Do you agree that it is more protective to prevent handler exposure than to address it after it occurs? If so, why? If not, do you have an alternative proposal to address handler exposure?
- Does other information exist on the benefits or challenges of ChE monitoring that the Agency has not presented in this proposal? If so, please provide.

## XVIII. Exemptions and Exceptions

### *A. Immediate Family*

1. *Decision not to propose.* EPA considered eliminating the existing exemption for workers and handlers under age 16 employed (receiving a wage or salary) by immediate family members; however, the available information may not be sufficient to support this option. Accordingly, EPA is not proposing to amend the immediate family exemption to impose any age requirements on establishments that qualify for the immediate family exemption to the WPS. Although the WPS exempts owners and their immediate family members from many provisions of the rule, EPA provides the exemption based upon assurances that owners voluntarily provide to immediate family members essentially the same protections required for workers and handlers covered by the WPS. [**Note:** EPA is proposing to expand the definition of ''immediate family'' to better reflect the range of familial relationships that could occur. See Unit XIX.A., for a discussion of the revised definition.]

2. *Existing WPS regulations.* The WPS exempts the owners of agricultural establishments from providing certain WPS protections to themselves and their immediate family members (40 CFR 170.104(a) and 170.204(a)). Specifically, the agricultural establishment owner is exempt from complying with the following requirements for immediate family members performing tasks as workers: Sections of the early-entry restrictions; providing pesticide safety training or other safety information; cleaning, storing, and maintaining PPE; maintaining decontamination sites and supplies; providing notice of and specific information about applications; and providing emergency assistance. Similarly for immediate family members performing handler tasks, the agricultural establishment owner is exempt from the following requirements: Providing pesticide safety training and other safety information such as restrictions during applications, knowledge of labeling and site-specific information, and safe operation of equipment; ensuring proper use, cleaning, and maintenance of PPE and avoiding heat-related illness while using PPE; maintaining decontamination sites and supplies; and providing emergency assistance. The agricultural establishment owner must comply with all other sections of the WPS. The immediate family includes only the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, and sisters-in-law of the owner of the agricultural establishment.

In addition, the definitions of workers and handlers require that they are employed for compensation in order to receive protection under the WPS. Therefore, any person performing worker or handler tasks who does not receive a wage or salary is not covered by any aspect of the WPS.

3. *Summary of the issues.* Stakeholder feedback, reports from the GAO, the CHPAC and recent research have indicated an increased awareness of the need to protect all children from adverse health effects of pesticide exposure (Ref. 20) (Ref. 74) (Ref. 102) (Ref. 103). [See Unit V.C. and V.E.] During the National Assessment, EPA did not seek specific stakeholder feedback on the existing immediate family exemption and whether it should be amended.

Input from the agricultural community indicates that emergency assistance and other protections are among the reasonable steps an owner of an agricultural establishment would take to protect family members.

4. *Options considered and not proposed.* The Agency considered narrowing the immediate family exemption in two ways: (1) Limiting it only to immediate family members of an owner of an agricultural establishment who are at least 16 years old, and (2) modifying the scope of the requirements that are exempted by eliminating from the list emergency assistance for workers and handlers and handler monitoring during fumigant application.

Limiting the exemption to employed family members who are at least 16 years old would not prohibit agricultural establishment owners from allowing their immediate family members under 16 years old to perform WPS tasks. The proposed definition of ''employ'' specifies salary or wages; other forms of compensation are not included in the definition. Therefore, immediate family members who are compensated in other ways besides salary or wages, but not ''employed'' by the WPS definition, would continue to be exempted from certain specified provisions of the WPS. As under the current rule, any person, including immediate family members under 16 years old, who does not receive a wage or salary would not be covered by any provisions of the WPS. See tables 1 and 2.

TABLE 1—CONSIDERED CHANGES TO THE WPS IMMEDIATE FAMILY EXEMPTION—MINIMUM AGE, EMERGENCY ASSISTANCE AND HANDLER MONITORING DURING FUMIGANT APPLICATIONS

| If the immediate family members are: | Then under the considered changes, the employer: |
|---|---|
| • Under 16 years old AND<br>• Employed on the agricultural establishment to perform WPS tasks (receiving a wage or salary). | • Would have to comply with all relevant provisions of the WPS (no immediate family exemption) for those immediate family members<br>• Would no longer have an exemption from providing emergency assistance to workers and handlers and monitoring handlers during fumigant applications |

EPA acknowledges requests from a range of stakeholders to ensure protection of all children working with or around pesticides. Recent findings suggest that working with or around pesticides may increase potential risks of harm to children's developing systems and that children's maturity and decision-making skills are not fully developed. EPA believes that owners of agricultural establishments generally protect family members independent of government regulation. EPA believes that owners of agricultural establishments who employ only members of their immediate families have access to a variety of sources of information, outside the scope of the WPS, on how to provide adequate protections from pesticide exposure to their family members. Programs such as 4–H and Future Farmers of America provide information to youth. The USDA's Cooperative Extension System, based out of land grant universities, operates agricultural outreach programs in every state. The Cooperative Extension System offers formal outreach, such as county or state farm safety days, and informal outreach and advice to individual farmers. The American Farm Bureau Federation and affiliated state farm bureau operations also provide outreach on topics including pesticide safety to farmers and their families. Finally, some farm owners may be certified as pesticide applicators. Certified pesticide applicators must pass an exam or attend a training program at the state level to demonstrate they are competent to use and manage pesticides safely. In addition, certified applicators are required to complete continuing education, which includes information and reminders about using pesticides safely and protecting others from pesticide exposure. It is not clear from the available information that the burdens associated with narrowing the existing exemption would produce commensurate risk reductions. Although EPA has not proposed changing the existing exemption from the requirement to provide certain WPS protections to immediate family members, EPA is requesting comment on this issue.

EPA also considered eliminating the current exemption at § 170.204(a)(i) in the case of immediate family members who are handling highly toxic pesticides or working in enclosed fumigated areas. EPA believes that owners of agricultural establishments generally protect family members independent of government regulation. It is not clear from the available information that the burdens associated with narrowing the existing exemption would produce commensurate risk reductions. Although EPA has not proposed eliminating the current exemption in the case of immediate family members who are handling highly toxic pesticides or working in enclosed fumigated areas, EPA is requesting comment on this issue.

Lastly, EPA considered eliminating the exemption for establishment owners to provide emergency assistance for immediate family members who are workers or handlers. In the event of a pesticide poisoning, certain symptoms, such as respiratory distress, need to be addressed promptly to avoid more serious problems, such as heart failure or an inability to breathe. Again, the Agency recognizes that establishment owners working with immediate family members have a vested interest in their family members' well being. EPA believes that additional regulation is not necessary to ensure that immediate family members who are workers or handlers receive assistance in the event of a pesticide-related emergency. It is not clear from the available information that the burdens associated with narrowing the existing exemption would produce commensurate risk reductions. Although EPA has not proposed eliminating the current exemption to providing emergency assistance to workers and handlers, EPA is requesting comment on this issue.

5. *Request for comment.* EPA specifically requests comment on the immediate family exemptions in the WPS.

- Would this requirement have a different impact on small farms than on larger establishments? If so, please explain the likely impact.
- Does exempting agricultural establishment owners from the requirements to provide certain protections to immediate family members present unreasonable risks to family members who are under 16 years old?
- What would be the impact of limiting the immediate family exemption to family members who are at least 16 years old and who are employed by the owner?
- How many agricultural establishments would be affected if EPA decided to limit the exemption to immediate family members at least 16 years old?

*B. Crop Advisors and Employees*

1. *Overview.* The existing WPS allows exemptions from some requirements for crop advisors and their employees. The Agency proposes to eliminate exemptions from protections for employees directly supervised by certified or licensed crop advisors. The Agency also proposes to eliminate the

exemption from the worker decontamination and emergency assistance provisions for certified or licensed crop advisors employed as workers on agricultural establishments.

2. *Existing WPS regulations.* The WPS allows crop advisor tasks to be conducted during pesticide application and during subsequent REIs.

As outlined in 40 CFR 170.5, crop advisor tasks include assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants, but not performing hand labor tasks. When performing crop advising tasks after the REI has expired or performing hand labor tasks, and employed by the agricultural establishment, a crop advisor is considered a worker under the WPS. A person employed by a commercial pesticide handling establishment performing crop advising tasks after expiration of an REI is not subject to any provisions of the rule.

The WPS exempts the employer from complying with some handler requirements when the employee performs crop advising tasks during an REI and that is a certified or licensed crop advisor or directly supervised by a certified or licensed crop advisor. To qualify for this exemption, the crop advisor certification or licensing program must include, at a minimum, all information listed under handler training, 40 CFR 170.230(c)(4). Under the current WPS, the certified crop advisor must make specific determinations regarding the appropriate PPE, decontamination and safe method of conduct for those working under his or her direct supervision. This information, as well as information regarding the product, method and time of application, REI, tasks, and contact information, must be conveyed by the certified crop advisor to each person under his supervision. Currently, the WPS exempts employers from complying with worker requirements such as providing decontamination supplies and emergency assistance for certified or licensed crop advisors and persons they directly supervise.

3. *Summary of the issues.* State regulatory agencies and their representatives have expressed concerns with the current crop advisor exemptions, noting that those working under the supervision of the crop advisors may be unaware of the risks posed by pesticides.

4. *Details of the proposal/rationale.* The Agency proposes to limit this exemption to crop advisors only, eliminating from the exemption employees directly supervised by certified or licensed crop advisors. The Agency believes employees who are not certified or licensed as crop advisors but who are performing crop advising tasks may be unable to make appropriate judgments regarding personal risk because they are not required to receive information about the risks of working around pesticide-treated areas and how to protect themselves from exposure.

If a person performs crop advising activities under the supervision of a certified crop advisor, he or she may not understand the factors influencing the risks well enough to take appropriate protective measures or to alert the supervising crop advisor to observations that could alter the initial decisions about the protective measures to be taken.

The Agency also proposes to eliminate the exemption for certified or licensed crop advisors employed as workers on agricultural establishments from the worker decontamination and emergency assistance provisions. While EPA believes this exemption applies to a small number of people it is important that all workers on agricultural establishments have access to decontamination supplies and emergency assistance.

The rule would retain the exemption for certified or licensed crop advisors to enter and perform crop advising tasks during an REI.

The Agency has discussed these exemptions with the National Alliance of Independent Crop Consultants (NAICC). NAICC representatives indicated that entry to perform crop advising tasks during an REI is a rare event, especially for persons who are not certified or licensed crop advisors (Ref. 104). Overall, the Agency believes that the proposed revision would not have a significant impact on the majority of crop advisors.

The proposed regulatory text concerning the crop advisor exemption appears in § 170.301(b) of the proposed rule.

5. *Costs and benefits.* EPA estimates the cost of amending the exemption for crop advisors would be $1,400, or less than $0.01 per establishment. NAICC representatives noted that there may be some cost to provide the WPS protections to currently-exempt supervised employees. The Agency believes that there are few certified crop advisors retained directly by agricultural establishments. For a discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

6. *Request for comment.* EPA specifically requests comment on the following questions:

- Should EPA consider an alternative to this proposal? If so, what alternative and why?
- Should EPA require specific training for the employees of crop advisors to ensure that they understand the risks of entering and working in areas treated with pesticides? If so, please provide specific information on the type of training and anticipated benefit to crop advisor employees. Also, please comment on whether a crop adviser's employees, who have received such training, should be exempt from the WPS requirements for provisions for decontamination supplies and emergency assistance and from following the labeling requirements for PPE for early entry.

*C. Revise the Exception to the Requirement for Workers To Be Fully Trained Before Entering Pesticide-Treated Areas*

1. *Overview.* For workers who are not performing early-entry activities, the existing WPS allows employers to delay training until before work begins on the 6th day of entry into a treated area providing the full required pesticide safety training to workers performing WPS-covered activities (referred to as the ''grace period''). During the grace period, the current WPS requires agricultural employers to provide an abbreviated training covering two major points: Where pesticides may be encountered and how to prevent pesticides from entering a worker's body. In order to balance the need for workers to receive sufficient information to protect themselves and the need for agricultural employers to have flexibility in employing workers, EPA proposes to shorten the grace period to two days and to require that workers receive training on protecting themselves and their families from pesticide exposure prior to entering a pesticide-treated area during the grace period. In essence, this exception to the general requirement that all workers be fully trained prior to entering a pesticide-treated area to perform WPS tasks would allow agricultural employers who have provided workers with certain essential safety information to direct those workers to perform WPS tasks for no more than 2 days before providing them with the full WPS pesticide safety training, and require the employer to maintain records of the information transfer for 2 years. The agricultural employer would be required to provide each such worker full pesticide safety training before allowing

the worker to enter a treated area for a third day. This proposal would provide the agricultural employer with the flexibility to choose whether to provide workers with full pesticide safety training immediately upon employment or to utilize the 2 day grace period, provided they comply with the conditions of the exception. EPA expects this change would improve workers' understanding of the risks they may face and how to protect themselves when they work in areas treated with WPS-covered pesticides, while maintaining flexibility for agricultural employers.

2. *Existing WPS regulations.* When EPA was developing the 1992 WPS, agricultural employers argued that they needed a training grace period because qualified trainers were not available in sufficient numbers to meet the need for worker training. To accommodate the need for flexibility for agricultural employers and in recognition of the high turnover in the workforce on some establishments, EPA adopted the grace period. The 1992 rule allowed agricultural employers to direct workers to perform work in pesticide-treated areas for up to 15 days before the employer was required to provide the full pesticide safety training outlined in § 170.130 (57 FR 38151; August 21, 1992). On January 1, 1996, EPA reduced the grace period to 5 days (60 FR 21944; May 3, 1995).

Under 40 CFR 170.130(a)(3)(ii), agricultural employers may direct workers to perform work (except for early-entry activities) in areas that, within the last 30 days, have been treated with a pesticide bearing a label requiring compliance with the WPS or have been under an REI for such pesticide for up to 5 days before the employer must provide the full pesticide safety training outlined in 40 CFR 170.130. During the grace period, employers must inform workers of the following points:

- Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;
- Prevent pesticides from entering your body by:

—Following directions and/or signs about keeping out of treated or restricted areas.
— Washing before eating, drinking, using chewing gum or tobacco, or using the toilet.
—Wearing work clothing that protects the body from pesticide residues.
—Washing/showering with soap and water, shampoo hair, and put on clean clothes after work.
—Washing work clothes separately from other clothes before wearing them again.
—Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

- Further training will be provided within 5 days.

See 40 CFR 170.130(c). Before the 6th day that workers remain on the establishment working in areas that, within the last 30 days, have been treated with a pesticide bearing a label requiring compliance with the WPS or have been under an REI for such pesticide, the agricultural employer must provide the full pesticide safety training.

3. *Summary of the issues.* Stakeholders, including Farmworker Justice and Migrant Clinicians Network, have repeatedly raised concerns for workers entering the pesticide-treated treated areas without receiving the full pesticide safety training (Ref. 35). They noted that the basic safety information provided prior to entry into a treated area does not describe the hazards associated with pesticides, how to recognize pesticide poisoning symptoms, or how to access emergency medical care. The lack of information may be of particular concern for workers performing tasks in recently treated areas or adjacent to an area being treated because they may not know what to do if they are sprayed or feel sick. Stakeholders also noted that a worker may be employed for fewer than 5 days on each of a series of farms and, as a result, may be at risk of significant pesticide exposure without ever receiving the full pesticide safety training. This situation is especially likely to occur during harvest periods, as workers may move from one farm to another as the harvest is completed, resulting in potentially large numbers of workers exposed to pesticides without full safety training.

Many of the SERs consulted by the SBAR panel requested that EPA retain the current 5 day grace period (Ref. 18, p. 21). They noted that employers have many legal obligations related to hiring a new employee, and pesticide worker safety training is just one element. In comments submitted to EPA, SERs informed EPA that the grace period offered agricultural employers flexibility about when to provide full training to workers without negatively impacting the performing of WPS tasks essential to agricultural production.

OSHA requires that employers provide training on potential chemical hazards that employees may face in the workplace before allowing employees to enter the area to begin work. These standards require employers to provide hazard information to workers before they begin any tasks that may expose them to a hazardous material or activity, rather than allowing them to work for a period before receiving the hazard information. See, e.g., the training requirements for employees that may encounter lead, 29 CFR 1962.62(l)(1), asbestos, 29 CFR 1926.1127(m)(4), and cadmium, 29 CFR 1926.1101(k)(9).

4. *Details of the proposal/rationale.* The exception would allow agricultural employers to postpone providing full pesticide training for up to 2 days after the worker begins work in WPS-covered areas. In order to qualify for the exception, agricultural employers would be required to provide certain safety information, which would incorporate both the information currently required by the regulation and additional content, to workers in a language and manner they understand before workers perform any WPS tasks in a treated area. Agricultural employers would also be required to maintain records of the information provided to workers for 2 years. Finally, agricultural employers would be required to provide the full pesticide safety training to workers before sending them into any treated area for a third day where within the last 30 days a pesticide product bearing a label requiring compliance with the WPS has been used, or an REI for such a pesticide has been in effect.

EPA believes that if the shortened grace period is adopted, it is likely to reduce the number of workers that may be exposed to pesticides without having the benefit of the full safety training. EPA proposes to re-characterize the grace period as an exception to the requirement that employers provide workers the full pesticide safety training before the worker may enter a pesticide-treated area. EPA believes that the shortened grace period and the requirement that employers provide certain basic safety information to workers before they enter a treated area (detailed below), and requiring recordkeeping would balance the need for workers to be informed about risks to which they may be exposed and the need for agricultural employers to have some flexibility regarding pesticide safety training. EPA believes re-characterizing the grace period as an exception would also make the regulation easier to understand.

In order to utilize the proposed exception, agricultural employers would need to provide certain safety information to the workers in a language

and manner they understand before the workers enter any pesticide-treated area. The required information would cover four areas: (1) Employer responsibilities for providing worker protections, (2) information about potential hazards in the workplace, (3) how to protect oneself from pesticide exposure and hazards in the workplace, and (4) emergency first aid procedures for pesticide poisonings or injuries. Under the four areas, the full list of topics to be conveyed to workers would be:

Employer Responsibilities for Providing Worker Protections

—Agricultural employers are required to provide workers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing pesticide safety information to workers before being directed to work in pesticide treated areas if they have not received full pesticide safety training; providing full pesticide safety training to workers before their 3rd day of work in pesticide treated areas; providing pesticide hazard information for products used on the establishment, decontamination supplies, and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas.
—Agricultural employers must inform workers how to recognize and understand the meaning of the warning sign used for notifying workers of restrictions on entering pesticide treated areas on the establishment. Workers must follow employer directions and/or signs about keeping out of entry restricted or pesticide treated areas.
—Agricultural employers must not allow or direct any worker who has not received full pesticide safety training and additional early entry worker notification to work in any area that is currently under an REI. Employers must comply with minimum age restrictions and notification requirements in order to direct workers to perform early-entry activities.
—Agricultural employers must not allow or direct any worker to mix, load, or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.
—Agricultural employers are prohibited from intimidating, threatening, coercing, or discriminating against any worker for the purposes of interfering with any attempt to comply with the requirements of this part, or because the worker has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this part.

Information About Potential Pesticide Hazards in the Workplace

—There are potential sources of pesticide exposure on agricultural establishments and pesticides and/or pesticide residues may be encountered during work activities. This includes pesticides drifting from nearby applications, and that pesticide residues may be on or in plants, soil, irrigation water, tractors, application equipment, or used personal protective equipment.
—Pesticides can cause illness or injury if they enter your body. Pesticides can enter the body by getting them on your skin or in your eyes, by swallowing them, or by breathing in their vapors.
—There are potential hazards from toxicity and exposure that pesticides present to workers, including acute and chronic illnesses/effects, delayed effects, and sensitization.
—There are potential hazards to children and pregnant women from pesticide exposure.

How to Protect Yourself From Pesticide Exposure and Hazards in the Workplace

—When working near pesticides or in pesticide treated areas, wear work clothing that protects the body from pesticide residues and always wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.
—Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working near or in pesticide treated areas.
—There are potential hazards from the pesticide residues that may be on work clothing. Wash work clothes before wearing them again, and always wash work clothes separately from other clothes.

Emergency First Aid Procedures for Pesticide Poisonings or Injuries

—Pesticides may cause skin rashes or hurt your eyes, nose or throat. Pesticides can make you feel sick in different ways, such as headache or dizziness, muscles pain or cramps, nausea or vomiting, sweating, drooling, fatigue, or trouble breathing.
—Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body and as soon as possible, shower, shampoo hair, and change into clean clothes. If a pesticide gets in your eyes, hold them open and rinse with a gentle stream of cool water. Rinse eyes for 15 minutes if possible.
—If you or someone you work with gets sick while working, tell your employer right away. If you suspect you have been injured or made ill from pesticides, get medical help as soon as possible. If you have been injured from pesticides while working, your employer must provide emergency transportation to a nearby medical facility and provide information about the pesticide or pesticides that may have made you sick.

After the employer provides the workers with the safety information in a language and manner they understand, the employer must create a record of the information provided and provide a copy of the record to the worker. The record would include the safety information conveyed to the worker, an affirmation that the worker has been provide a copy of the safety information sheet and that the information was communicated to the worker orally in a language the worker understands, the worker's name, signature, date of birth, the date the information was provided, the employer's name, and employer's phone number or phone number of the establishment. The employer can have all workers sign the record and acknowledgement before providing copies to each worker.

Finally, EPA is committed to protecting vulnerable populations. Workers face risk of occupational exposure to pesticides. Through this proposed change, EPA seeks to mitigate the elevated risk associated with entering a treated area without training on what pesticide risks may be encountered in the workplace and how to protect oneself from pesticide exposure. EPA believes this proposal is consistent with the principles of environmental justice, providing a population that may face disproportionate risks of exposure based on the nature of their tasks, limited understanding of English, low literacy, and low education level with information in advance of the potential for exposure.

The proposed regulatory text establishing a 2 day grace period, altering the requirements for training under the grace period, and establishing a requirement to maintain records for 2 years appears in § 170.309 of the proposed rule.

5. *Costs and benefits.* EPA estimates that replacing the current 5-day grace period with the proposed 2-day exception to the requirement for

employers to provide full pesticide safety training to workers before directing workers to enter a pesticide treated area would cost $2.3 million, or about $6 per agricultural establishment. This cost estimate does not include recordkeeping; the cost of the recordkeeping for worker training is discussed in Unit VII.B. For a complete discussion of the costs of the proposals and alternatives, see the ''Economic Analysis of Proposed Revisions to the Worker Protection Standard,'' Chapter 3 Cost Analysis (Ref. 1).

EPA could not estimate specific benefits associated with this proposal. However, EPA believes that providing certain safety information to workers before they perform WPS tasks and shortening the interval before they receive full training would decrease the number of occupational pesticide-related illnesses because workers would be better informed on how to protect themselves before entering a pesticide-treated area.

6. *Alternative options considered but not proposed.* As an alternative, EPA is considering eliminating the grace period. Under this option, agricultural employers would be required to provide all workers with full pesticide training before sending them into any treated area where within the last 30 days a pesticide product bearing a label requiring compliance with the WPS has been used, or an REI for such a pesticide has been in effect. Eliminating the grace period would ensure that all workers are fully trained on how to protect both themselves and their family members before entering an area covered by the WPS. The estimated cost for eliminating the grace period for worker training would be $2.8 million, or about $7 per establishment. The increased cost comes from the employer having to provide full pesticide safety training sessions every time workers enter the establishment to perform WPS tasks, rather than waiting and holding a larger training session for workers hired over a period of a few days. EPA does not have sufficient data to compare the benefits of providing the pesticide safety training before workers enter the treated area to ensure that workers are fully prepared and aware of the potential risks they may encounter in the workplace, and the costs that agricultural employers might incur if the grace period were eliminated.

Information exists that supports the alternative option to eliminate the grace period entirely. First, the number of trainers may be sufficient. EPA reduced the grace period from 15 to 5 days over 10 years ago in recognition that employers had less difficulty finding someone to provide pesticide safety training to workers. Based on significant outreach and support provided by EPA to training organizations, such as AFOP, sufficient trainers may be available nationally to meet the needs of agricultural employers without a grace period. Second, 90% of workers report employment by 1 or 2 establishments a year (Ref. 3, p. 23). Employers now may deal with less worker turnover and therefore may not need to provide multiple trainings throughout the year. The lower burden on employers makes the call for a grace period less compelling. Lastly, small business representatives advised EPA that they generally provide training to workers upon employment to comply with other regulations or for general orientation (Ref. 18). Under the proposal for worker pesticide safety training, once a worker is trained in a particular year, he or she would receive a record of the training to show subsequent employers, thereby eliminating the need for subsequent employers to repeat the training.

EPA notes that OSHA requires employers in almost all industries to notify their workers of the hazards that may be encountered in the workplace before the work begins (29 CFR 1910.1200(h)). This requirement has been in place since 1983. OSHA established the standard based on the belief that, without adequate knowledge of the potential dangers in the workplace, workers would not be able to take protective measures or avoid hazards (52 FR 31852; August 24, 1987)(59 FR 6126; February 9, 1994) (Ref. 63).

7. *Request for comment.* EPA specifically requests comment on the following:

- Supply of trainers and how quickly they can be available.
- Frequency of hiring new workers during the year.
- Evidence about the frequency of illness for workers who receive basic vs. full pesticide safety training.
- Should EPA eliminate the grace period? Why or why not?
- What would be the impact of eliminating the grace period on agricultural employers, trainers, and/or workers?
- What would be the impact of a shorter grace period on agricultural employers and trainers?
- Would retaining a shorter grace period as proposed negatively impact workers? If so, how?
- Should EPA retain the current 5 day grace period or reduce the grace period to 3 or 4 days? If EPA reduces the grace period to 3 or 4 days, what would be the relative impacts on agricultural employers and workers as compared to the proposed reduced grace period of 2 days?

## XIX. General Revisions to the WPS

### *A. Improved Definitions*

The Agency proposes to revise 40 CFR 170.3 by revising certain definitions to provide greater clarity, by adding several new definitions, and by eliminating several unnecessary definitions. EPA believes that improved definitions would reduce the likelihood of alternative interpretations, while improving compliance and enforceability.

The Agency believes these proposed revisions to the definitions adopt more widely used and commonly accepted ''plain English'' language, and add clarity and consistency to the rule. The proposed revisions to the definitions also help address regulatory or policy issues raised by state regulatory partners and other program stakeholders. The Agency does not believe the proposed revisions to the definitions will add new regulatory requirements on the regulated community or substantially increase regulatory burden.

The following definitions appear in § 170.5 of the proposed rule.

1. *Revised definitions.* The Agency proposes to revise the following existing definitions: ''agricultural employer,'' ''agricultural establishment,'' ''agricultural plant,'' ''commercial pesticide handling establishment,'' ''crop advisor,'' ''farm,'' ''hand labor,'' ''handler,'' ''handler employer,'' ''immediate family,'' ''nursery,'' and ''worker.''

The Agency proposes to change the existing definition of ''immediate family'' as follows: ''. . . includes only spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law; grandparents, grandchildren, brothers, sisters, brothers-in-law, and sisters-in-law.'' The remaining revisions to the existing definitions are simply intended to clarify those terms, rather than substantively alter them. Substantive changes to the immediate family exemption considered but not proposed are discussed in Unit XVIII.A.

2. *New definitions.* The Agency also proposes to add the following new definitions: ''authorized representative,'' ''closed system,'' ''commercial pesticide handler employer,'' ''commercial production,'' ''enclosed space production,'' ''employ,'' ''enclosed cab,'' ''entry-restricted area,'' ''forest operation,'' ''labor contractor,'' ''outdoor production,'' ''personal protective

equipment,'' ''safety data sheet,'' ''use,'' and ''worker housing area.''

As an example of the changes to the definitions, the Agency proposes to define ''employ'' as the receipt of either wages or salary for work. Under the current rule, a person is covered by the WPS if he or she receives any type of compensation. Current interpretations of compensation include students receiving credits and garden club members receiving benefits such as coffee and cake at meetings. The proposed definition would limit WPS coverage to only those who receive pay and perform worker or handler tasks when a pesticide has been applied or an REI in effect on the establishment within the past 30 days.

3. *Definitions to be deleted.* The Agency proposes to delete the definition of ''greenhouse'' because it is no longer necessary as a result of the proposed addition of ''enclosed space production.'' The agency also proposes to delete the definition of ''forest'' because it is being replaced with ''forest operation.'' Additional details regarding significant proposed definition changes are discussed above.

4. *Request for comment.* EPA specifically requests comment on the following questions:

- What impact do you expect on employers, workers, handlers, or other stakeholders as a result of replacing the terms ''farms,'' ''forests,'' ''nurseries,'' and ''greenhouses'' with the terms ''outdoor production'' and ''enclosed space production''?
- What are the impacts of revising the definition of ''immediate family''?
- Should EPA consider including cousins in the definition of immediate family? Why or why not?
- What are the impacts of adding a definition of ''employ''?
- What are the impacts of adding a definition of ''authorized representative''?
- Are there other terms that the Agency should consider clarifying, redefining, or eliminating from the rule? If so, please provide detail about the term(s) and rationale for change.

*B. Restructuring of Part 170*

In order to improve clarity and implement the principles of using plain language in regulations, EPA proposes to reorganize the structure of part 170 and to rename the rule. EPA expects the revised part 170 will be easier to read and understand, thereby improving compliance by worker and handler employers.

1. *Existing part 170.* Part 170, the Worker Protection Standard, is organized into three subparts: ''General Provisions,'' ''Standard for Workers,'' and ''Standard for Handlers.'' Often, content that applies to both workers and handlers is repeated in two sections. The exemptions and exceptions are listed throughout the rule. EPA has received feedback from states, farmworker groups, employers, trainers, and other stakeholder groups that part 170 is difficult to follow (Ref. 44).

2. *Details of the proposed rule.* EPA proposes to rename the regulation ''Requirements for Protection of Agricultural Workers and Pesticide Handlers.'' The proposal would reorganize the rule into four subparts: ''General Provisions,'' ''Requirements for Protection of Agricultural Workers,'' ''Requirements for Protection of Pesticide Handlers,'' and ''Exemptions and Exceptions.'' The ''General Provisions'' subpart would describe certain obligations for agricultural employers, handler employers, and those requirements that apply to both. The subparts ''Requirements for Protection of Agricultural Workers'' and ''Requirements for Protection of Pesticide Handlers'' would provide information that supplements the general duties and obligations for employers and outline the content of the training and decontamination supplies that the employer must provide for workers and handlers respectively. Finally, EPA consolidated most of the exceptions and exemptions into a separate subpart to make them easier to find and reference.

EPA believes that the restructured rule will facilitate better understanding of the rule by employers and state and tribal regulatory agencies. EPA specifically requests comment on the following questions:

- Is the restructuring clearer and easier to read and understand?
- Are there other ways that part 170 could be simplified or made clearer? If so, please provide suggested language and rationale.

## XX. Implementation of this Proposal

EPA proposes to make the final rule effective 60 days after the date of publication in the **Federal Register**; however, compliance with certain provisions, including the additional pesticide safety training content and pesticide safety information and new signs for posting, would not be required until 2 years after the publication date of the final rule. The 2 year delay between publication of the final rule and the effective date of the changes would give state and tribal regulators, employers, trainers, and other stakeholders time to make the necessary changes to their daily activities and for materials and signs to be developed and made available. EPA expects that employers would need new signs and training materials to transition to new requirements. State regulators would need to become familiar with the new regulation and conduct outreach to the regulated community.

Trainers would have to become familiar with the additional training content, to ensure that they meet any eligibility requirements, and to obtain new training materials. EPA recognizes that training materials that comply with the proposed expanded content must be available before the effective date of the new training requirements. Therefore, EPA has linked the effective date of the implementation of the proposed additional pesticide safety training requirements for workers and handlers to an announcement of availability of materials that satisfy the new requirements in the **Federal Register**. If EPA announces the availability of the materials sooner than18 months after the effective date of the final rule, then the new training requirements would go into effect 2 years after the effective date of the final rule. If EPA announces the availability of materials that comply with the proposed requirements more than 18 months after the effective date of the final rule, then the proposed training requirements would not take effect until 180 days after the announcement of availability publishes in the **Federal Register**.

To facilitate implementation, EPA plans to issue a ''how to comply'' guidance document at the time the final rule is published, to develop and disseminate new training materials, to conduct outreach to all potentially affected parties, and to provide assistance to states.

EPA specifically requests comment on the following questions:

- Please provide input on how to measure the efficacy of the revised WPS once implemented. Describe specific data elements and how EPA could use them to determine whether the revised regulation is effective.
- What data would help to evaluate the impacts (costs) and benefits of the rule after implementation? Describe specific data elements and how EPA could use them to evaluate the costs and benefits of the rule.
- If EPA evaluates the effectiveness and/or the impacts and benefits of the rule, what timeframe should be used to conduct the evaluation, e.g., should EPA begin a review after the rule is fully implemented or a specific time period after full implementation? For how long should EPA conduct the evaluation? Please provide additional information

on methodology that could be used to conduct any evaluation.

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## XXII. FIFRA Review Requirements

Under FIFRA section 25(a), EPA has submitted a draft of the proposed rule to the Secretary of the Department of Agriculture and the appropriate Congressional Committees. Their comments on this proposed rule and EPA's responses are located in the docket for this rulemaking.

The Science Advisory Panel waived its review of this proposal on February 7, 2013.

## XXIII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735; October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this proposed rulemaking to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821; January 21, 2011), and any changes made in response to OMB recommendations have been documented in the public docket for this action.

Each of the WPS provisions is intended to do one of the following: (1) Inform farm workers and pesticide handlers about the hazards and risks from pesticides they use or with which they come into contact in the workplace, (2) protect workers and handlers from occupational exposure to pesticides and the potential adverse effects, or (3) mitigate the potential adverse effects of unavoidable pesticide exposure, including accidents. Within these categories, EPA evaluated the costs and benefits of alternative requirements and is proposing a set of requirements that, in combination, is expected to achieve substantial benefits at minimum cost. In addition, EPA prepared an analysis of the potential costs and benefits associated with this proposed action, titled ''Economic Analysis of Proposed Revisions to the Worker Protection Standard'' (Ref. 1). A copy of the analysis is available in the docket for this action and is briefly summarized here.

EPA estimates the incremental cost of the proposed revisions to be between about $62.1 million and $72.9 million annually. These costs are almost entirely borne by farms that hire labor and use pesticides, which account for about 25 percent of all crop farms in the United States. Commercial pesticide handling establishments, which contract to apply pesticides on farms, may see an incremental cost of $170 to $190 per year per firm. The cost to individual farms will depend on the number and type of employees employed. EPA estimates that larger farms will incur costs of $340 to $400 per year. Smaller operations are estimated to incur costs between $130 and $150 per year, which amounts to less than 0.1 percent of average annual revenue.

The incremental cost to employ a worker is estimated to be less than $5 per year, which would not be expected to have an impact on employment. The incremental cost to employ a pesticide handler is estimated to be about $60 per year, which represents 0.3 percent of the total cost of a part-time employee, a marginal increase that would not be expected to have an impact on job availability.

The benefits of the proposed rule would accrue to agricultural workers, pesticide handlers and, indirectly due to reduced take-home pesticide exposure, to their families. The revised rule is expected to substantially mitigate the potential for adverse health effects (both acute and chronic) for these workers and handlers from occupational exposures to pesticides.

It is difficult to quantify a specific level of risk and project the risk reduction that will result from this rulemaking, because workers and handlers are potentially exposed to a wide range of pesticides with different toxicities and risks; however, the proposed changes to the WPS are designed to reduce occupational exposure to all pesticides. EPA believes there is sufficient evidence in the peer-reviewed literature to suggest reducing pesticide exposure would result in a benefit to public health through reduced acute and chronic illness.

Overall, the weight of evidence suggests that the proposed requirements would result in long-term health benefits to agricultural workers and pesticide handlers. EPA is not able to estimate the dollar value of the benefits that accrue from reducing chronic exposure to pesticides but there are well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects in

the peer-reviewed literature. The proposed requirements provide benefits to the 2.3 million workers and pesticide handlers, not only by reducing their daily risk of pesticide exposures but also by improving quality of life throughout their lives, resulting in a lower cost of healthcare and a healthier society. Many of the changes to current WPS requirements specifically mitigate the potential for workers to transport pesticide residues home to their families. Thus, the proposed requirements are expected to reduce children's exposure to pesticides. The agency believes the unquantified benefits to children of workers and handlers are great, and reducing exposure to pesticides could translate into fewer sick days, fewer days missed of school, improved capacity to learn, and better long-term health. Parents and caregivers reap benefits by having healthier families, fewer missed workdays, and better quality of life, as well.

EPA does estimate a value of avoided acute incidents as a result of the proposed rule, although this estimate is biased downward by an unknown degree for several reasons. First, pesticide incidents, like many illnesses and accidents, are underreported because sufferers may not seek medical care, cases may not be correctly diagnosed, and correctly diagnosed cases may not be filed with the central reporting database. Second, our approach only measures avoided medical costs and lost wages, not the willingness to pay to avoid possible symptoms due to pesticide exposure, which could be substantially higher. Just the small amount EPA is able to monetize accrues to be between $1.2 million and $2.8 million annually. The effect of underreporting can be significant. If only 25% of poisonings are reported (within the range of estimates in the literature), the quantified estimated benefits of the rule would be about $11.4 million annually. This conservative estimate only includes the avoided costs in medical care and lost productivity to workers and handlers. It does not include quantification of the reduction in chronic effects of pesticide exposure to workers and handlers, reduced effects of exposure including developmental impacts, to children and pregnant workers and handlers, or willingness to pay to avoid symptoms of pesticide exposure.

Because the proposed changes to the requirements for protection of workers and handlers apply to many different pesticides in many different situations, EPA is not able to quantify the benefits expected to accrue from reducing chronic exposure to pesticides; however, well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects exist in peer-reviewed literature. EPA conducted a ''break even'' analysis to demonstrate the potential benefits that would result from reducing a very small number of chronic illnesses that have well-documented associations with pesticide exposure. Under this analysis, avoiding only 53 total cases of non-Hodgkin's lymphoma, prostate cancer, Parkinson's disease, lung cancer, bronchitis, and asthma (under 0.8% of total cases among workers) would bridge the gap between the estimated benefits from reducing acute incidents and the cost of the rule, about $63.7 million. Overall, the weight of evidence suggests that the proposed requirements would result in long term health benefits to agricultural workers and pesticide handlers, not only by reducing their daily risk of pesticide exposures, but also by improving quality of life throughout their lives, resulting in a lower cost of health care and a healthier society.

In addition, changes to the current WPS requirements, namely improved training on reducing pesticide residues brought from the treated area to the home on workers and handlers' clothing and bodies and establishing a minimum age for handlers and early entry workers, other than those covered by the immediate family exemption, specifically mitigate the potential for children to be exposed to pesticides directly and indirectly. The unquantified benefit to adolescent workers and handlers, as well as children of workers and handlers is great; reducing exposure to pesticides could translate into fewer sick days, fewer days missed of school, improved capacity to learn, and better long-term health. Parents and caregivers reap benefits by having healthier families, fewer missed workdays, and better quality of life.

*B. Paperwork Reduction Act (PRA)*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* EPA has prepared an Information Collection Request (ICR) document to replace the existing approved ICR. The new ICR document, which is titled ''Agricultural Worker Protection Standard Training and Notification (Proposed Rule)'' and is identified by EPA ICR No. 2491.01 and OMB Control No. 2070–NEW, has been placed in the docket for this proposed rule (Ref. 105). Responses to the proposed amendments would be mandatory.

The information activities related to the current WPS requirements are already approved by OMB in an ICR entitled, ''Worker Protection Standard Training and Notification'' (EPA ICR No. 1759; OMB Control No. 2070–0148) (Ref 106). The proposed rule replacement ICR addresses the information collection requirements contained in the current regulations as well as in the amendments identified in this proposed rule. The amendments include:

- Increasing the amount of training handlers and workers receive.
- Establishing a minimum age for pesticide handlers and workers engaged in early-entry activities.
- Increasing recordkeeping responsibilities of the agricultural employers and handler employers.

The replacement ICR addresses adjustments to the estimated number of respondents, time for activities, and wage rates related to the current regulatory requirements as approved under OMB Control No. 2070–0148. In addition, the replacement ICR addresses program changes related to the proposed amendments, including modifications to restrictions in field entry activities during restricted entry intervals; increased hazard communications; increased training (for both workers and handlers); provisions for information during emergency assistance; and recordkeeping for respirator requirements and for workers performing early entry activities. The estimated annual burden approved by OMB under OMB Control No. 2070–0148 is 1,776,131 hours. The total estimated annual respondent burden being proposed in the replacement ICR is 8,316,993 hours, a net increase of 6,540,862 hours.

The estimated burden represents the total to comply with the full WPS, including all proposed revisions and those that are unchanged by this proposal. This differs from the estimated incremental cost of the proposal, which only considers the net cost of the proposed revisions.

The burdens of the various activities range from 30 seconds per respondent for workers to provide acknowledgements to their employers to an hour per respondent for handler training. This estimate includes third-party WPS training and notification requirements. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Any comments on the Agency's need for information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, should be directed to the public docket for this proposed rule, under Docket ID Number EPA–HQ–OPP–2011–0184. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. In addition, please submit a copy of your comments on the ICR directly to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 19, 2014, a comment to OMB is best assured of having the full effect if OMB receives it by April 18, 2014. The final will address any comments received regarding the information collection requirements contained in this proposal.

*C. Regulatory Flexibility Act (RFA)*

The RFA, 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. EPA estimates the rule will affect over 300,000 small farms, nurseries, and greenhouses, and several hundred small commercial entities that are contracted to apply pesticides. EPA expects the impacts to be less than 0.1% of the annual value of sales or revenues for the average small entity. EPA calculates the impact of the rule as the percent of sales revenue. Only the very smallest farms, with average sales of less than $4,500 per year, may face impacts above one percent of sales. The number of entities that may be impacted in excess of one percent of sales could be over 40,000, given the number of small-small establishments. However, this is likely an overestimate of the number of farms impacted as it does not account for the nearly 5,000 small-small farms in California that would face impacts well below the national average. Please refer to the Economic Assessment, Table 5.4–3. ''Small Business Impacts, WPS Farms making pesticide applications'' for further details of the assessment.

Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined in accordance with the RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201. The SBA's definitions typically are based upon either a sales or an employment level, depending on the nature of the industry.

2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that this action will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity impact analysis prepared as part of the economic analysis for this proposed rule and a copy of which is available in the docket for this rulemaking (Ref. 18). The following is a brief summary of the factual basis for this certification.

Although not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel for this particular proposed rule because EPA has ultimately determined that this proposal would not have a significant economic impacts on a substantial number of small entities, EPA convened a SBAR Panel to obtain advice and recommendations from small entities representatives potentially subject to the proposed rule's requirements. EPA's subsequent small business analysis demonstrates that there will not be a significant impact on a substantial number of small entities. Nevertheless, a Panel consisting of the following four individuals was convened:

- EPA's Small Business Advocacy Chairperson,
- Director of the Field and External Affairs Division of EPA's Office of Pesticide Programs,
- Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and
- Acting Chief Counsel for Advocacy of the Small Business Administration.

The Panel was convened to consider revisions to two related rules, which were being revised by EPA's Office of Pesticide Programs: Worker Protection Standard for Agricultural Pesticides; and Certification of Pesticide Applicators.

The Worker Protection Standard applies to the following agricultural establishments engaged in the production of agricultural commodities: farms, forests, nurseries, and greenhouses.

Since many agricultural establishments are small entities, the WPS would potentially impact a large number of small entities. After extensive research from several sources, including the National Agricultural Statistics Service, state pesticide usage data, the Bureau of Labor Statistics, and internet research, EPA assembled a list of industries that could be affected by the regulation. EPA then reviewed qualifications for small and large entities. The number of entities by industry is listed in the Final Report of the SBAR Panel for the two rules (Ref. 18).

In January 2008, EPA began an informal outreach process to potential Small Entity Representatives (SERs, representatives of the small entities who may be subject to the requirements of the proposed rule) as part of the pre-SBAR panel planning process. SERs participate in the process to ensure that EPA hears the concerns and suggestions of small entities. EPA contacted States, agricultural extension agents, and organizations known to represent affected small business, such as grower associations, and various pest control industry associations to ask them to submit the names of potential SERs. EPA looked for representatives from differing types of businesses involved in pesticide application and/or different crops or agricultural commodities. EPA also sought to have representatives from a number of geographic areas of the nation.

In February 2008, EPA sent an email to the 20 potential SERs identified by that point and provided background on the proposed changes and a description of the SBAR Panel Process. EPA held an informal outreach meeting on June 30, 2008. The SBAR Panel convened on September 4, 2008. The Panel decided to add one additional SER, for a total of 21, prior to the Panel meeting with the SERs. The Panel held a formal panel outreach meeting/teleconference with SERs on September 25, 2008. Two weeks before the panel outreach meeting EPA sent materials to each of the SERs via email. A list of all materials shared with the SERs before the outreach meeting is contained in the pre-proposed rule portion of the docket for this action.

The outreach meeting was held to solicit feedback from the SERs on their suggestions for the upcoming rulemaking. EPA asked the SERs to provide feedback on ideas under consideration for the proposed rulemaking and to respond to questions regarding their experience with the implementation of the current WPS. Specifically, the Panel asked the SERs to provide any alternate solutions to the potential proposals presented by EPA that would provide flexibility or would decrease the economic impact on small entities while still accomplishing the goal of improved safety. The Agency received written comments from SERs which are Appendix B to the Panel's Report.

The Panel evaluated the assembled materials and small entity comments and prepared a report for the Agency's consideration titled: ''Small Business Advocacy Review Panel on EPA's Planned Revision to Two Related Rules: Worker Protection Standard for Agricultural Pesticides; and Certification of Pesticide Applicators.'' A copy of the Panel report is included in the docket for this proposed rule.

The SBAR Panel recommended that as part of the proposal for revising the Worker Protection Standard in 40 CFR part 170, EPA specifically request comments on the following regulatory flexibility options:

a. *Oral notifications.* The Panel recommended that EPA permit oral notifications without posted notifications for those pesticide applications with REIs of 48 hours or less. EPA is proposing and also requesting comments on allowing oral notification for products with REIs of 48 hours or less, unless the pesticide label specifically requires both oral and posted notification.

b. *Annual training.* The Panel recommended that EPA consider ways to reduce the burden of annual training for workers and handlers on entities with fewer than 10 employees if they maintain written documentation that: (1) There has been no worker turnover, (2) no new or different pesticides have been applied, and (3) all workers and handlers were previously trained on the establishment. EPA is proposing annual training for all workers and handlers regardless of the number of employees and requesting comment on this recommendation.

c. *Grace period.* The Panel recommended that EPA consider programmatic flexibilities for small entities related to the grace period before employers must be trained. For example, consider collaboration between the Agency and states to increase the use of training verification programs to reduce the need for unnecessary retraining and use of the grace period. EPA is proposing a 2 day grace period and training verification records. EPA is also requesting comments on making mandatory the current optional training verification program and flexibility for small entities.

d. *Shower facilities.* The Panel recommended that EPA limit consideration of shower facilities to establishments with permanent mixing-loading sites. EPA is not proposing to require showers on any establishment. EPA is requesting comments from the public on an alternative requirement for employers to provide showers at permanent mixing-loading sites.

The Agency invites comments on all aspects of the proposal and its impacts on small entities.

### *D. Unfunded Mandates Reform Act (UMRA)*

Title II of UMRA, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total estimated cost of the proposed rule is between $65 million and $75 million per year, with most requirements on agricultural employers, who would bear most of the cost. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

Although this action does not have federalism implications, EPA worked extensively with state partners when considering revisions to the existing regulations. As discussed in Unit V.B., EPA has solicited feedback from states in a number of ways. The two primary avenues through which EPA sought state comments were the National Assessment of EPA's Pesticide Worker Safety Program (National Assessment) and the Pesticide Program Dialogue Committee workgroup on proposed changes to the Worker Protection Standard and Certification Rule.

The Agency initiated the National Assessment of EPA's Pesticide Worker Safety Program (National Assessment) in 2000. Through this process, EPA convened stakeholder meetings in Texas, California, and Florida. States participated substantially throughout the National Assessment. State regulators served on workgroups related to specific areas of change (pesticide safety training, hazard communication, and train-the-trainer programs). States provided feedback to EPA about the strengths and weaknesses of the rule as implemented and made suggestions for improving the protections and enforceability of the WPS. Recommendations from States and other stakeholders were included in the ''Report on the National Assessment of EPA's Pesticide Worker Safety Program'' (Ref. 17).

In 2006, during the initial stages of the framing of this proposal, EPA's Federal Advisory Committee, the Pesticide Program Dialogue Committee (PPDC), formed a workgroup to provide feedback to EPA on different areas for change. The workgroup had over 70 members representing a wide range of stakeholders, including State representatives. EPA shared with the workgroup suggestions for regulatory change identified through the National Assessment and solicited comments. The workgroup convened for a series of meetings and conference calls to get more information on specific parts of the regulation and provided its thoughts to the Agency. States provided comments individually and through the Association of American Pesticide Control Officials. Comments from the PPDC workgroup members have been compiled into a single document and posted in the docket.

In the spirit of the Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule would not regulate tribal governments directly;

agricultural employers are the directly affected entities. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined by Executive Order 12866. However, EPA believes that the environmental health or safety risks addressed in this proposed rule have a disproportionate effect on children.

Children face the risk of pesticide exposure from work in pesticide-treated areas, from the use of pesticides near their homes, and from residues of pesticides brought home by family members after a day of working with pesticides or in pesticide-treated areas. The proposed rule is intended to reduce these exposures and risks. By establishing a minimum age for certain pesticide-related activities in agriculture, children would receive less exposure to pesticides that may lead to chronic or acute pesticide-related illness. Another proposal to reduce risk to children is training workers and handlers on the risks presented by take-home pesticide exposure and how best to reduce it.

Like the Department of Labor's regulations that implement the FLSA, the proposed rule seeks to regulate the ages at which children can work in agriculture, at least for certain activities. The proposed rule would establish a minimum age of 16 for pesticide handlers and for early-entry workers, except those working on an establishment owned by an immediate family member. Since children in agriculture are at such great risk, EPA feels that they warrant special consideration in light of the Executive Order on children's health. EPA expects that many of the proposed changes would mitigate or eliminate many risks faced by youths.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to pesticides.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355; May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The revisions to part 170 are intended to improve the standards of protection offered to agricultural workers, and do not affect the use of oil, coal, or electricity.

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

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

EPA considered adopting the American National Standards Institute Standard for eye flushing in the event of ocular contamination, which calls for a minimum of 1.5 liter (0.4 gallons) per minute of flushing fluid, such as water, for 15 minutes (ANSI Z358.1–2009). EPA adopted this standard only at permanent mixing loading sites on agricultural establishments, rather than for all handler eye flush decontamination because the Agency believes it would be impractical for employers to achieve at non-permanent sites. EPA is requesting comments on the incorporation of this standard into the regulation.

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

Executive Order 12898 (59 FR 7629; February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. In fact, the population of agricultural workers and handlers that the rule seeks to protect is comprised primarily of minority and low-income individuals. As reviewed in Unit IV. A., the farmworker community, due to occupation, economic status, health, language and other sociodemographic characteristics, faces an increased risk of pesticide exposure which this rulemaking seeks to reduce through improving communication and protections.

The Agency engaged with stakeholders from affected communities extensively in the development of this rulemaking, in order to obtain meaningful involvement of all parties. EPA believes that the proposed changes would improve the health of agricultural workers and handlers by, among other things, increasing the frequency of training, enhancing training content to include ways to minimize pesticide exposure to children and in the home, adding posting of treated areas near worker and handler housing to prevent accidental entry, and establishing a minimum age for pesticide handlers and early-entry workers.

**List of Subjects in 40 CFR Part 170**

Environmental protection, Pesticides, Agricultural worker, Pesticide handler, Employer, Farms, Forests, Nurseries, Greenhouses, Worker protection standard.

Dated: February 20, 2014.

**Gina McCarthy,**

*Administrator.*

Therefore, it is proposed that 40 CFR chapter I, subchapter E, part 170 is revised to read as follows:

## PART 170—WORKER PROTECTION STANDARD

Sec.

**Subpart A—General Provisions**

170.1 Scope and purpose.
170.3 Applicability of this part.
170.5 Definitions.
170.7 Effective date.
170.9 Agricultural employer duties.
170.11 Pesticide information requirements on agricultural establishments.
170.13 Commercial pesticide handler employer duties.
170.15 Prohibited actions.
170.17 Violations of this part.

**Subpart B—Requirements for Protection of Agricultural Workers**

170.101 Training requirements for workers.
170.103 Establishment-specific information for workers.
170.105 Entry restrictions associated with pesticide applications.
170.107 Worker entry restrictions after pesticide applications.
170.109 Oral and posted notification of worker entry restrictions.
170.111 Worker decontamination supplies.

**Subpart C—Requirements for Protection of Agricultural Pesticide Handlers**

170.201 Training requirements for handlers.
170.203 Knowledge of labeling, application-specific, and establishment-specific information for handlers.
170.205 Requirements during applications to protect handlers, workers, and other persons.
170.207 Personal protective equipment.
170.209 Handler decontamination supplies.

**Subpart D—Exemptions and Exceptions**

170.301 Exemptions.
170.303 Exceptions for entry by workers during restricted-entry intervals.
170.305 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval.
170.307 Exceptions to personal protective equipment requirements specified on pesticide product labeling.
170.309 Exception to training requirements for workers.

**Authority:** 7 U.S.C. 136w.

## Subpart A—General Provisions

### § 170.1 Scope and purpose.

This regulation is intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. It requires agricultural employers and commercial pesticide handler employers to provide specific information and protections to workers and handlers when pesticides are used on agricultural establishments in the production of agricultural plants. It also requires pesticide handlers to wear the label-specified clothing and personal protective equipment when performing pesticide handler activities, and to take measures to protect workers and other persons during pesticide applications.

### § 170.3 Applicability of this part.

(a) This regulation applies whenever a pesticide product bearing a label requiring compliance with this part is used in a manner directly related to the production of agricultural plants on an agricultural establishment that employs workers or handlers.

(b) This regulation does not apply when a pesticide product bearing a label requiring compliance with this part is used on an agricultural establishment in any of the following circumstances:

(1) As part of government-sponsored public pest control programs of which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(2) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(3) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(4) As attractants or repellents in traps.

(5) On the harvested portions of agricultural plants or on harvested timber.

(6) For research uses of unregistered pesticides.

(7) On pasture and rangeland where the forage will not be harvested for hay.

(8) In a manner not directly related to the production of agricultural plants, including, but not limited to structural pest control and control of vegetation in non-crop areas.

### § 170.5 Definitions.

Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

*Agricultural employer* means any person who is an owner of, or is responsible for the management or condition of an agricultural establishment, and who employs any worker or handler.

*Agricultural establishment* means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants.

*Agricultural plant* means any plant, or part thereof, grown, maintained, or otherwise produced for commercial production.

*Authorized representative* means a person designated by the worker or handler, orally or in writing, to request and obtain any information that the employer is required to provide upon request to the worker or handler.

*Chemigation* means the application of pesticides through irrigation systems.

*Closed system* means a system for mixing or loading pesticides that encloses the pesticide during removal of the pesticide from its original container and transfer, mixing, or loading of the pesticide product, mixtures or dilutions, and any rinse solution, if applicable, into a new container or application equipment, in such a manner that prevents the pesticide and any pesticide mixture or use dilution from contacting handlers or other persons before, during and after the transfer, except for negligible release associated with normal operation of the system.

*Commercial pesticide handler employer* means any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment.

*Commercial pesticide handling establishment* means any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

*Commercial production* means growing, maintaining or otherwise producing agricultural plants for sale or trade, for research or experimental purposes, or for use in their entirety in another location. Commercial production includes producing agricultural plants for use by the agricultural employer or agricultural establishment instead of purchasing the agricultural plants.

*Crop advisor* means any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants.

*Early entry* means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

*Employ* means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party.

*Enclosed cab* means a cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents dermal contact with pesticides that are being applied outside of the cab.

*Enclosed space production* means production of an agricultural plant in a structure or space that is covered in whole or in part and that is large enough to permit a person to enter.

*Entry-restricted area* means the area from which workers or other persons

must be excluded during and after the pesticide application.

*Farm* means any agricultural establishment, other than a nursery or forest operation, engaged in the outdoor or enclosed production of agricultural plants.

*Forest operation* means an agricultural establishment engaged in the outdoor production of any agricultural plant to produce any wood fiber or timber products.

*Fumigant* means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

*Hand labor* means any agricultural activity performed by hand or with hand tools that cause a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues.

*Handler* means any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

(1) Mixing, loading, or applying pesticides;

(2) Disposing of pesticides;

(3) Handling opened containers of pesticides; emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions; or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions;

(4) Acting as a flagger;

(5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues;

(6) Assisting with the application of pesticides;

(7) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by § 170.105(b)(3) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation;

(8) Entering a treated area outdoors after application of any soil fumigant during the label-specified entry restricted period to adjust or remove coverings used in fumigation, such as tarpaulins;

(9) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established by § 170.105(b)(3) or the pesticide product labeling has been met.

*Handler employer* means any person who is self-employed as a handler or who employs any handler.

*Immediate family* is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, and sisters-in-law.

*Labor contractor* means a person who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

*Nursery* means any agricultural establishment engaged in the outdoor or enclosed space production of any agricultural plant to produce cut flowers or foliage, ferns, plants, or seedlings that will be used in part or their entirety in another location. Such plants include, but are not limited to, flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turf grass produced for sod.

*Outdoor production* means production of an agricultural plant in an outside open space or area that is not enclosed or covered in any way.

*Owner* means any person who has a present possessory interest (e.g., fee, leasehold, rental, or other) in an agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part.

*Personal protective equipment* means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

*Restricted-entry interval* means the time after the end of a pesticide application during which entry into the treated area is restricted.

*Safety data sheet* has the same meaning as the definition at 29 CFR 1900.1200(c).

*Treated area* means any area to which a pesticide is being directed or has been directed.

*Use, as in ''to use a pesticide''* means any of the following—

(1) Pre-application activities, including, but not limited to:

(i) Arranging for the application of the pesticide;

(ii) Mixing and loading the pesticide;

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(2) Application of the pesticide.

(3) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early entry workers, providing decontamination supplies, providing pesticide information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(4) Other pesticide-related activities, including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

*Worker* means any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

*Worker housing area* means any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

**§ 170.7 Effective date.**

The effective date for this part shall be [effective date 60 calendar days after the promulgated rule is transmitted for Congressional review per FIFRA 25(a)(4)].

**§ 170.9 Agricultural employer duties.**

Agricultural employers must:

(a) Ensure that any pesticide applied on an agricultural establishment is used in a manner consistent with the pesticide product labeling, including the requirements of this part.

(b) Ensure that each worker and handler subject to this part receives the protections required by this part.

(c) Ensure that any handler, and any worker performing early entry activities, is at least 16 years old.

(d) Provide to each person, including labor contractors, who supervises any workers or handlers, information and directions sufficient to ensure that each worker and handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(e) Require each person, including labor contractors, who supervises any workers or handlers, to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this part.

(f) *Provide emergency assistance.* If there is reason to believe that a person who is or has been employed by an agricultural establishment to perform tasks related to the production of agricultural plants, has been poisoned or injured by exposure to pesticides as a result of his or her employment on the agricultural establishment, the agricultural employer must do all of the following, within 30 minutes after learning of the possible poisoning or injury:

(1) Make available to that person transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating emergency medical facility.

(2) Provide to that person or treating medical personnel all of the following information for each pesticide product to which that person might have been exposed:

(i) Copies of the applicable safety data sheet and the label for the pesticide product, or alternatively, a copy of the applicable safety data sheet for the product and the product name, EPA registration number, active ingredients, antidote, and first aid and medical treatment information from the pesticide product labeling.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(g) Ensure that workers or other persons employed by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under § 170.201. Before allowing any person not directly employed by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer must provide all of the following information to such persons:

(1) That pesticide application equipment may be contaminated with pesticides.

(2) The potentially harmful effects of exposure to pesticides.

(3) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(4) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(h) Provide pesticide information in accordance with § 170.11 if workers or handlers are on the establishment and within the last 30 days a pesticide product bearing a label requiring compliance with this part has been used, or a restricted-entry interval for such pesticide has been in effect on the establishment.

(i) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(j) Ensure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(k) Ensure that whenever handlers employed by a commercial pesticide handler establishment will be on an agricultural establishment, the handler employer is provided information about, or is aware of, the specific location and description of any entry restricted areas, or treated areas where a restricted-entry interval is in effect, and any restrictions on entering those areas.

**§ 170.11 Pesticide information requirements on agricultural establishments.**

(a) *Pesticide Safety Information.* Whenever pesticide information is required to be provided under § 170.9(h), pesticide safety information must be displayed on the agricultural establishment in accordance with this paragraph (a).

(1) *Content.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand and must include all of the following points:

(i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo hair, and change into clean clothes.

(vii) Follow directions about keeping out of treated or entry-restricted areas.

(viii) The name, address, and telephone number of the nearest operating emergency medical care facility.

(ix) After [date 2 years after effective date of the final rule specified in § 170.7], the pesticide safety information must also include the name, address, and telephone number of the state or tribal lead agency responsible for pesticide enforcement, and instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned or injured by pesticides.

(2) *Changes to pesticide safety information.* If there are any changes to the information in §§ 170.11(a)(1)(viii) or 170.11(a)(1)(ix), the agricultural employer must promptly update the pesticide safety information display.

(3) *Location.* The pesticide safety information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and it can be readily seen and read. The pesticide safety information must also be displayed anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to §§ 170.111 or 170.209.

(4) *Accessibility.* Workers and handlers must be allowed access to the pesticide safety information at all times when the information is required to be displayed.

(5) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(b) *Keeping and providing information about pesticides used on the agricultural establishment*—(1) *Content and timing.* Whenever pesticide information is required to be provided under § 170.9(h), the agricultural employer must maintain copies of the pesticide product labeling and the safety data sheet for the pesticide product(s) applied and record all of the following information no later than the end of the

work day that the application takes place:

(i) The name, EPA registration number, and active ingredient(s) of the pesticide product applied.

(ii) The crop or site treated and the location and description of the treated area.

(iii) The date(s) and times the application started and ended.

(iv) The end date and duration of the restricted-entry interval.

(2) *Record Retention and Accessibility.* The agricultural employer must maintain the pesticide information described in § 170.11(b)(1) on the agricultural establishment for 2 years after the date of expiration of any restricted-entry interval, and make the information available to any worker(s), handler(s), or their authorized representative(s) upon request during normal work hours.

**§ 170.13 Commercial pesticide handler employer duties.**

Commercial pesticide handler employers must:

(a) Ensure that any pesticide applied on an agricultural establishment is used in a manner consistent with the pesticide product labeling, including the requirements of this part.

(b) Ensure each handler subject to this part receives the protections required by this part.

(c) Ensure that any handler is at least 16 years old.

(d) Provide to each person, including labor contractors, who supervises any handlers, information and directions sufficient to ensure that each handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(e) Require each person, including labor contractors, who supervises any handlers, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this part.

(f) Ensure that before any handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(g) Ensure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(h) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any entry restricted areas, or treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(i) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(1) Specific location(s) and description of the area(s) to be treated.

(2) The date(s) and start and estimated end times of application.

(3) Product name, EPA registration number, and active ingredient(s).

(4) Restricted-entry interval.

(5) Whether posting and oral notification are required under § 170.109.

(6) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(j) Ensure if there are any changes to the information provided in § 170.13(i), that the agricultural employer is provided updated information within 2 hours after completing the application. Changes to the estimated application end time of less than 1 hour do not require notification.

(k) *Provide emergency assistance.* If there is reason to believe that a person who is or has been employed by the commercial pesticide handling establishment to perform tasks related to the production of agricultural plants, has been poisoned or injured by exposure to pesticides as a result of that employment, the commercial pesticide handler employer must do all of the following, within 30 minutes after learning of the possible poisoning or injury:

(1) Make available to that person transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that person may be working, to an operating emergency medical facility.

(2) Provide to that person or treating medical personnel all of the following information for each pesticide product to which that person might have been exposed:

(i) Copies of the applicable safety data sheet and the label for the pesticide product, or alternatively, a copy of the applicable safety data sheet for the pesticide product and the product name, EPA registration number, active ingredients, antidote, and first aid and medical treatment information listed on the pesticide product labeling.

(ii) The circumstances of application or use of the pesticide(s).

(iii) The circumstances that could have resulted in exposure to the pesticide(s).

(l) Ensure that persons employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under § 170.201. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer must provide all of the following information to such persons:

(1) That pesticide application equipment may be contaminated with pesticides.

(2) The potentially harmful effects of exposure to pesticides.

(3) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(4) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

**§ 170.15 Prohibited actions.**

No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this part applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for attempting to comply with this part, or because the worker or handler has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this part. Any such intimidation, threat, coercion, or discrimination violates FIFRA section 12(a)(2)(G), 7 U.S.C. 136j(a)(2)(G).

**§ 170.17 Violations of this part.**

(a) Under FIFRA section 12(a)(2)(G), it is unlawful for any person ''to use any registered pesticide in a manner inconsistent with its labeling.'' When this part is referenced on a label, users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling.

(b) A person who has a duty under this part, as referenced on the pesticide product labeling, and who fails to perform that duty, violates FIFRA section 12(a)(2)(G) and is subject to a civil penalty under section 14. A person who knowingly violates section 12(a)(2)(G) is subject to section 14 criminal sanctions.

(c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term ''acting for'' includes both employment and contractual relationships, including, but not limited to, labor contractors.

(d) The requirements of this part, including the decontamination requirements, must not, for the purposes of section 653(b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the OSHA Field Sanitation Standard, 29 CFR 1928.110, or other agricultural non-pesticide hazards.

## Subpart B—Requirements for Protection of Agricultural Workers

### § 170.101 Training requirements for workers.

(a) *General requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last 30 days a pesticide product bearing a label requiring compliance with this part has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last 12 months, except as provided in paragraph (b) of this section and in § 170.309 of this part.

(b) *Exceptions.* The following workers need not be trained under this section:

(1) A worker who is currently certified as an applicator of restricted use pesticides under part 171 of this chapter.

(2) A worker who has satisfied the handler training requirements of § 170.201.

(3) A worker who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or the state or tribal agency responsible for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in § 170.201(c)(2) and (3).

(c) *Training programs.* (1) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. A person that meets the trainer requirements of § 170.101(c)(4) must be present during the entire training program to conduct the training and must respond to workers' questions.

(2) The training must include, at a minimum, all of the following topics:

(i) Agricultural employers are required to provide workers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing pesticide safety training, pesticide safety and application information, decontamination supplies, and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas.

(ii) How to recognize and understand the meaning of the field warning sign used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of entry-restricted or pesticide treated areas.

(iv) Where and in what form pesticides may be encountered during work activities and potential sources of pesticide exposure on the agricultural establishment. This includes that pesticide residues may be on or in plants, soil, irrigation water, tractors, application equipment, or used personal protective equipment and that pesticides may drift through the air from nearby applications.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Potential hazards from chemigation and drift.

(vii) Routes through which pesticides can enter the body.

(viii) Signs and symptoms of common types of pesticide poisoning.

(ix) Emergency first aid for pesticide injuries or poisonings.

(x) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(xi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body and as soon as possible, shower, shampoo hair, and change into clean clothes.

(xii) How and when to obtain emergency medical care.

(xiii) When working near pesticides or in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(xiv) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working near or in pesticide treated areas.

(xv) Potential hazards from pesticide residues on clothing.

(xvi) Wash work clothes before wearing again.

(xvii) Wash work clothes separately from other clothes.

(xviii) Do not take pesticides or pesticide containers used at work to your home.

(3) After [date 2 years after effective date of the final rule specified in § 170.7] if EPA has announced availability of training materials that comply with the requirements of § 170.101(c)(2)(i)–(xviii) and § 170.101(c)(3)(i)–(ix) in the **Federal Register** by [date 18 months after effective date specified in § 170.7], or 180 days after EPA announces availability of training materials that comply with the requirements of § 170.101(c)(2)(i)–(xviii) and § 170.101(c)(3)(i)–(ix) in the **Federal Register** if announced after [date 18 months after effective date specified in § 170.7], the training must also include all of the following:

(i) Agricultural employers are required to provide workers with pesticide hazard information.

(ii) Agricultural employers must not allow or direct any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(iii) There are minimum age restrictions and notification requirements for early entry activities.

(iv) Potential hazards to children and pregnant women from pesticide exposure.

(v) Keep children and nonworking family members away from pesticide treated areas.

(vi) Remove work boots or shoes before entering home.

(vii) After working near or in pesticide treated areas, remove work clothes and wash or shower before physical contact with children or family members.

(viii) How to report suspected pesticide use violations to the state or tribal agency responsible for pesticide enforcement.

(ix) Agricultural employers are prohibited from intimidating, threatening, coercing, or discriminating against any worker for attempting to comply with the requirements of this part, or because the worker has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this part.

(4) The person who conducts the training must meet one of the following:

(i) Be designated as a trainer of certified applicators by EPA or the state or tribal agency responsible for pesticide enforcement.

(ii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.

(iii) Until [date 2 years after effective date of the final rule specified in § 170.7], a certified applicator of restricted use pesticides under part 171 may conduct worker training.

(d) *Recordkeeping.* (1) For each worker required to be trained under paragraph (a), the agricultural employer must maintain on the agricultural establishment, for 2 years from the date of the training, a record including all of the following:

(i) The trained worker's printed name and signature.

(ii) The trained worker's date of birth.

(iii) The date of the training.

(iv) Information identifying which EPA-approved training materials were used.

(v) The trainer's name and documentation showing that the trainer met the requirements of § 170.101(c)(4) at the time of training.

(vi) The agricultural employer's name.

(2) For each worker trained, the agricultural employer must provide to the worker a record of the training that contains the information required under § 170.101(d)(1).

**§ 170.103 Establishment-specific information for workers.**

(a) *Requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last 30 days a pesticide product bearing a label requiring compliance with this part has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of establishment-specific information in accordance with this section. The establishment-specific information must be provided orally, in a manner the worker can understand.

(b) *Content.* The establishment-specific information must include all of the following:

(1) The location of pesticide safety information required by § 170.11(a).

(2) The location of pesticide application and hazard information required by § 170.11(b).

(3) The location of decontamination supplies required by § 170.111.

**§ 170.105 Entry restrictions associated with pesticide applications.**

(a) *Outdoor production pesticide applications.* During any outdoor production pesticide application described in column A of Table 1 of this paragraph, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler, to enter or to remain in the entry-restricted area specified in column B of Table 1 of this paragraph. After the application is complete, the area subject to the label-specified restricted-entry interval and the post-application entry restrictions specified in § 170.107 is the treated area.

TABLE 1—ENTRY-RESTRICTED AREAS DURING OUTDOOR PRODUCTION PESTICIDE APPLICATIONS

| A. During application of a pesticide: | B. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in: |
|---|---|
| (1)(a) Applied:<br>(i) Aerially, or<br>(ii) In an upward direction, or<br>(iii) Using a spray pressure greater than 150 psi, or<br>(b) Applied as a:<br>(i) Fumigant, or<br>(ii) Smoke, or<br>(iii) Mist, or<br>(iv) Fog, or<br>(v) Aerosol. | Treated area plus 100 feet around the treated area within the boundaries of the agricultural establishment. |
| (2)(a) Applied downward using:<br>(i) A height of greater than 12 inches from the planting medium, or<br>(ii) A fine spray (droplet median diameter of 101–200 microns), or<br>(iii) A spray pressure greater than 40 psi and less than 150 psi.<br>(b) Not as in (1) or (2)(a) of this table but for which a respiratory protection device is required for application by the product label. | Treated area plus 25 feet around the treated area, within the boundaries of the agricultural establishment. |
| (3) Applied otherwise | Treated area. |

(b) *Enclosed space production pesticide applications.* (1) During any enclosed space production pesticide application described in column A of Table 2 under paragraph (b)(4) of this section, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler, to enter or to remain in the entry-restricted area specified in column B of Table 2 during the application and until the time specified in column C of Table 2 has expired.

(2) After the time specified in column C of Table 2 under paragraph (b)(4) of this section has expired, the area subject to the label-specified restricted-entry interval and the post-application entry restrictions specified in § 170.107 is the area specified in column D of Table 2 under paragraph (b)(4) of this section.

(3) When column C of Table 2 under paragraph (b)(4) of this section specifies that ventilation criteria must be met, ventilation must continue until the air concentration is measured to be equal to or less than the inhalation exposure level the labeling requires to be achieved. If no inhalation exposure level is listed on the labeling, ventilation must continue until after one of the following conditions is met:

(i) Ten air exchanges are completed.

(ii) Two hours of ventilation using fans or other mechanical ventilating systems.

(iii) Four hours of ventilation using vents, windows, or other passive ventilation.

(iv) Eleven hours with no ventilation followed by 1 hour of mechanical ventilation.

(v) Eleven hours with no ventilation followed by 2 hours of passive ventilation.

(vi) Twenty-four hours with no ventilation.

(4) The following Table 2 applies to paragraphs (b)(1), (2), and (3) of this section.

TABLE 2—ENTRY-RESTRICTED AREAS DURING ENCLOSED SPACE PRODUCTION PESTICIDE APPLICATIONS

| A. When a pesticide is applied: | B. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in: | C. Until: | D. After the expiration of time specified in column C, the area subject to the restricted-entry interval is: |
|---|---|---|---|
| (1) As a fumigant. | Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area. | The ventilation criteria of paragraph (b)(3) of this section are met. | No post-application entry restrictions required by § 170.107 after criteria in column C are met. |
| (2) As a<br>(i) Smoke, or<br>(ii) Mist, or<br>(iii) Fog, or<br>(iv) Aerosol. | Entire enclosed space | The ventilation criteria of paragraph (b)(3) of this section are met. | Entire enclosed space. |
| (3) Not in (1) or (2) of this table, and for which a respiratory protection device is required for application by the product label. | Entire enclosed space | The ventilation criteria of paragraph (b)(3) of this section are met. | Treated area. |
| (4) Not in (1), (2), or (3) of this table, and:<br>(i) From a height of greater than 12 in. from the planting medium, or<br>(ii) As a fine spray (droplet median diameter of 101–200 microns), or<br>(iii) Using a spray pressure greater than 40 psi. | Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space. | Application is complete | Treated area. |
| (5) Otherwise. | Treated area | Application is complete | Treated area. |

**§ 170.107 Worker entry restrictions after pesticide applications.**

(a) After the application of any pesticide in outdoor production on an agricultural establishment, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired and all treated area warning signs have been removed, except for early entry activities permitted by § 170.303.

(b) After the application of any pesticide in enclosed space production, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in column D in Table 2 under § 170.105(b)(4), before the restricted-entry interval specified on the pesticide labeling has expired and all treated area warning signs have been removed, except for early entry activities permitted by § 170.303.

(c) When two or more pesticides are applied at the same time, the applicable restricted-entry interval is the longest of the applicable restricted-entry intervals.

**§ 170.109 Oral and posted notification of worker entry restrictions.**

(a) *General Requirement.* The agricultural employer must notify workers of all entry restrictions required by §§ 170.105 and 170.107 in accordance with this section.

(1) *Type of notification required*—(i) *Outdoor production applications.* If a pesticide with product labeling that requires a restricted-entry interval greater than 48 hours is applied in outdoor production, the agricultural employer must notify workers of the application by posting warning signs in accordance with paragraph (b) of this section. If the product labeling of the pesticide requires a restricted-entry interval equal to or less than 48 hours, the agricultural employer must notify workers of the application either by posting warning signs in accordance with paragraph (b) of this section or by providing workers with an oral warning in accordance with paragraph (c) of this section.

(ii) *Enclosed space production applications.* If a pesticide with product labeling that requires a restricted-entry interval greater than 4 hours is applied in enclosed space production, the agricultural employer must notify workers of the application by posting warning signs in accordance with paragraph (b) of this section. If the product labeling of the pesticide requires a restricted-entry interval equal to or less than 4 hours, the agricultural employer must notify workers of the application either by posting warning signs in accordance with paragraph (b) of this section or by providing workers with an oral warning in accordance with paragraph (c) of this section.

(iii) *Double notification.* If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with paragraph (b) of this section and must also provide oral notification of the application to the worker in accordance with paragraph (c) of this section.

(2) *Exceptions.* Notification need not be given to a worker if the agricultural employer can ensure that one of the following is met:

(i) From the start of the application in enclosed space production until the end of the application and during any restricted-entry interval, no workers will enter the entire enclosed space.

(ii) The only worker(s) for which notification is required were also involved in the application of the pesticide as handlers, and they are aware of all information required by paragraph (c)(1) of this section.

(iii) From the start of the application in outdoor production until the end of the application and during any restricted-entry interval, no worker(s) will enter, work in, remain in, or pass

through on foot the treated area or any area within 1/4 mile of the treated area on the agricultural establishment.

(b) *Requirements for posted warning signs.* When posting is required, the agricultural employer must, unless otherwise prescribed by the label, ensure that the warning sign(s) conforms to the requirements of this paragraph. When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry, other than entry permitted by § 170.303 of this part, is prohibited for the entire area while the signs are posted.

(1) *General.* The warning signs must meet all of the following requirements:

(i) Be one of the three sizes specified in this paragraph (b) and comply with the posting placement and spacing requirements applicable to that sign size.

(ii) Be posted prior to but no earlier than 24 hours before the scheduled application of the pesticide.

(iii) Remain posted throughout the application and any restricted-entry interval.

(iv) Be removed or covered within 3 days after the end of the application or any restricted-entry interval, whichever is later, but under no circumstances shall the signs remain posted and uncovered when worker entry is permitted, other than entry permitted by § 170.303 of this part.

(v) Remain visible and legible during the time they are required to be posted.

(2) *Content.* (i) The warning sign must have a white background. The words ''DANGER'' and ''PELIGRO,'' plus ''PESTICIDES'' and ''PESTICIDAS,'' must be at the top of the sign, and the words ''Entry Restricted'' and ''Entrada Restringida'' must be at the bottom of the sign. Letters for all words must be clearly legible. An octagon containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the octagon must be red, except that the hand and a large portion of the face must be in white. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the size and appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:

(ii) The agricultural employer may replace the Spanish portion of the warning sign with an alternative non-English language if that alternative language is the language read by the largest group of workers at that agricultural establishment who do not read English. The alternative language sign must be in the same format as the original sign and conform to all other requirements of paragraph (b)(2)(i) of this section.

(iii) Until [date 2 years after effective date of the final rule specified in § 170.7], a warning sign meeting the following requirements may be substituted for the warning sign specified in paragraph (b)(i) of this section. The warning sign must have a background color that contrasts with red. The words ''DANGER'' and ''PELIGRO,'' plus ''PESTICIDES'' and ''PESTICIDAS,'' shall be at the top of the sign, and the words ''KEEP OUT'' and ''NO ENTRE'' shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:

(3) *Size and posting.* (i) The standard sign must be at least 14 inches by 16 inches with letters at least 1 inch in height.

(ii) When posting treated areas in outdoor production using the standard sign, the signs must be visible from all reasonably expected points of worker entry to the treated area, including at least each access road, each border with any worker housing area within 100 feet of the treated area, and each footpath and other walking route that enters the treated area. Where there are no reasonably expected points of worker entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iii) When posting treated areas in enclosed space production using the standard sign, the signs must be posted so they are visible from all reasonably expected points of worker entry to the treated area including each aisle or other walking route that enters the treated area. Where there are no reasonably expected points of worker entry to the treated area, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iv) If a smaller warning sign is used with ''DANGER'' and ''PELIGRO'' in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red octagon at least 3 inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than 50 feet apart around the perimeter of the treated area in addition to the locations specified in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section.

(v) If a smaller sign is used with ''DANGER'' and ''PELIGRO'' in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red octagon at least one and a half inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than 25 feet apart around the perimeter of the treated area in addition to the locations specified in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section.

(vi) A sign with ''DANGER'' and ''PELIGRO'' in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red octagon smaller than one and a half inches in diameter containing an upraised hand and a stern face is not permitted.

(c) *Oral warnings*—(1) *Requirement.* The agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker is on the premises when an application will occur, the warning must be given before the application begins. Otherwise, the warning must be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning must include all of the following:

(i) The location(s) and description of the entry-restricted area(s) and the treated area(s).

(ii) The dates and times during which entry is restricted.

(iii) Instructions not to enter the entry-restricted area during application, and not to enter the treated area until the restricted-entry interval has expired.

**§ 170.111 Worker decontamination supplies.**

(a) *Requirement.* The agricultural employer must provide decontamination supplies in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide, including, but not limited to, soil, water, and plants.

(b) *General conditions.* The decontamination supplies required in paragraph (a) of this section must include 1 gallon of water per worker for routine washing and emergency eye flushing, soap, and single-use towels. The supplies must meet all of the following requirements:

(1) *Water.* At all times when this part requires agricultural employers to make water available to workers, the agricultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. When water stored in a tank is to be used for mixing pesticides, it must not be used for decontamination or eye flushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank, such as anti-backflow siphon devices, one-way or check valves, or an air gap sufficient to prevent contamination.

(2) *Soap and single-use towels.* The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) *Timing.* (1) If any pesticide with a restricted-entry interval greater than 4 hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least 30 days after the restricted-entry interval expires.

(2) If the only pesticides applied in the treated area are products with a restricted-entry interval of 4 hours or less, the decontamination supplies must be provided from the time workers first enter the treated area until at least 7 days after the restricted-entry interval expires.

(d) *Location.* (1) The decontamination supplies must be located together and be reasonably accessible to and not more than 1/4 mile from where workers are working.

(2) Where workers are working more than 1/4 mile from the nearest place of vehicular access, the soap, single-use towels, clean change of clothing, and water may be at the nearest place of vehicular access.

(3) The decontamination supplies must be outside any treated area.

## Subpart C—Requirements for Protection of Agricultural Pesticide Handlers

**§ 170.201 Training requirements for handlers.**

(a) *General requirement.* Before any handler performs any handler activity involving a pesticide product bearing a label requiring compliance with this part, the handler employer must ensure that the handler has been trained in accordance with this section within the last 12 months, except as provided in paragraph (b) of this section.

(b) *Exceptions.* The following persons need not be trained under this section:

(1) A handler who is currently certified as an applicator of restricted use pesticides under part 171 of this chapter.

(2) A handler who is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or the state or tribal agency responsible for pesticide enforcement, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in § 170.201(c)(2) and (3).

(c) *Training programs.* (1) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. A person that meets the handler trainer requirements of § 170.201(c)(4) must be present during the entire training program to conduct the training and must respond to handlers' questions.

(2) The pesticide safety training materials must include, at a minimum, all of the following:

(i) All the topics required by § 170.101(c)(2).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow all pesticide labeling and use directions.

(iv) Format and meaning of all information contained on pesticide labels and in labeling.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) Handler employers are required to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(3) After [date 2 years after effective date of final rule specified in § 170.7] if EPA has announced availability of training materials that comply with the

requirements of § 170.201(c)(2)(i)–(x) and § 170.201(c)(3)(i)–(iv) in the **Federal Register** by [date 18 months after effective date specified in § 170.7], or 180 days after EPA announces availability of training materials that comply with the requirements of § 170.201(c)(2)(i)–(x) and § 170.201(c)(3)(i)–(iv) in the **Federal Register** if announced after [date 18 months after effective date specified in § 170.7], the training materials must also include all of the following:

(i) Handlers must cease or suspend a pesticide application if workers or other persons are in the treated area or the entry-restricted area.

(ii) Handlers must be at least 16 years of age.

(iii) Handler employers must ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator.

(iv) Handler employers must post treated areas as required by this rule.

(v) All the topics specified in § 170.101(c)(3).

(4) The person who conducts the training must meet one of the following:

(i) Be certified as an applicator of restricted use pesticides under part 171 of this chapter.

(ii) Be designated as a trainer of certified applicators or pesticide handlers by EPA or the state or tribal agency responsible for pesticide enforcement.

(iii) Have completed an EPA-approved pesticide safety train-the-trainer program for handler trainers.

(d) *Recordkeeping.* (1) Handler employers must maintain records of training for handlers employed by their establishment for 2 years from the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The trained handler's date of birth.

(iii) The date of the training.

(iv) Information identifying which EPA-approved training materials were used.

(v) The trainer's name and documentation showing that the trainer met the requirements of § 170.201(c)(4) at the time of training.

(vi) The handler employer's name.

(2) For each handler trained, the handler employer must provide a record of the training to the handler that contains the information required under § 170.201(d)(1).

**§ 170.203 Knowledge of labeling, application-specific, and establishment-specific information for handlers.**

(a) *Knowledge of labeling and application-specific information.* (1) The handler employer must ensure that before any handler performs any handler activity involving a pesticide product bearing a label requiring compliance with this part, the handler either has read the pesticide product labeling or has been informed in a manner the handler can understand of all labeling requirements and use directions necessary for proper use of the pesticide.

(2) The handler employer must ensure that the handler has access to the product labeling at all times during handler activities.

(3) The handler employer must ensure that the handler is aware of requirements for any entry-restricted areas as described in § 170.105.

(b) *Knowledge of establishment-specific information*—(1) *Requirement.* Before any handler performs any pesticide handler activity on an agricultural establishment where within the last 30 days a pesticide product bearing a label requiring compliance with this part has been used, or a restricted-entry interval for such pesticide has been in effect, the handler employer must ensure that the handler has been informed of establishment-specific information in accordance with this paragraph (b). The establishment-specific information must be provided orally, in a manner the handler can understand.

(2) *Content.* The establishment-specific information must include all of the following:

(i) The location of pesticide safety information required by § 170.11(a).

(ii) The location of pesticide application and hazard information required by § 170.11(b).

(iii) The location of decontamination supplies required by § 170.209.

**§ 170.205 Requirements during applications to protect handlers, workers, and other persons.**

(a) *Contact with workers and other persons.* The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler located on the establishment.

(b) *Suspending applications.* After [date 2 years after effective date of final rule specified in § 170.7], the handler performing the application must immediately stop or suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler, is in the treated area or entry-restricted area.

(c) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every 2 hours.

(d) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(1) That any handler who enters an entry-restricted area described in Table 2 of § 170.105, maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(2) That the handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for handlers, in the event that entry becomes necessary for rescue.

**§ 170.207 Personal protective equipment.**

(a) *Handler responsibilities.* Any person who performs handler activities involving a pesticide product bearing a label requiring compliance with this part must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product.

(b) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, even though pesticide labeling may require such work clothing to be worn.

(1) When ''chemical-resistant'' personal protective equipment is specified by the pesticide product labeling to be worn, it must be made of material that the manufacturer has declared, in writing, to be chemical resistant.

(2) When ''waterproof'' personal protective equipment is specified by the pesticide product labeling to be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during ordinary conditions of use.

(3) When a ''chemical-resistant suit'' is specified by the pesticide product labeling to be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(4) When ''coveralls'' are specified by the pesticide product labeling to be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(5) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with non-separable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than 10 hours of use or within 24 hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(6) When ''chemical-resistant footwear'' is specified by the pesticide product labeling to be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(7) When ''protective eyewear'' is specified by the pesticide product labeling to be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(8) When a ''chemical-resistant apron'' is specified by the pesticide product labeling to be worn, an apron that covers the front of the body from mid-chest to the knees must be worn.

(9) The respirator specified by the pesticide product labeling must be used. Whenever a respirator other than a dust/mist filtering respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of paragraphs (b)(9)(i) through (iii) of this section are met before the handler performs any pesticide handler activity where the respirator is required to be worn. The handler employer must maintain for 2 years, on the establishment, records documenting the completion of the requirements of paragraphs (b)(9)(i) through (iii) of this section.

(i) Handler employers must provide handlers with fit-testing using the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 CFR 1910.134.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 CFR 1910.134.

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of 29 CFR 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(10) When ''chemical-resistant headgear'' is specified by the pesticide product labeling, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(c) *Use of personal protective equipment.* (1) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(2) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(d) *Cleaning and maintenance.* (1) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(2) If any personal protective equipment cannot be cleaned properly, the handler employer must render the personal protective equipment unusable and dispose of it in accordance with any applicable federal, state, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word ''DANGER'' or ''WARNING'' on the label must not be reused.

(3) The handler employer must ensure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(4) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(5) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(6) The handler employer must ensure that when dust/mist filtering respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of 8 hours of cumulative use.

(7) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When breathing resistance becomes excessive.

(iii) According to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of 8 hours of cumulative use.

(8) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides.

(ii) The potentially harmful effects of exposure to pesticides.

(iii) The correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(iv) Proper decontamination and personal hygiene practices.

(9) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not in use.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(10) The handler employer must not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(e) *Heat-related illness.* Where a pesticide label requires the use of personal protective equipment for a handler activity, the handler employer must take appropriate measures to prevent heat-related illness.

**§ 170.209 Handler decontamination supplies.**

(a) *Requirement.* The handler employer must provide decontamination supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required by § 170.207(d)(9).

(b) *General conditions.* The decontamination supplies required in paragraph (a) of this section must include: at least 3 gallons of water per handler for routine hand washing, emergency eye flushing, and washing the entire body in case of an emergency; soap; single-use towels; and clean clothing for use in an emergency. The decontamination supplies must meet all of the following requirements:

(1) *Water.* At all times when this section requires handler employers to make water available to handlers, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. When water stored in a tank is to be used for mixing pesticides, it must not be used for decontamination or eye flushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank, such as anti-backflow siphon devices, one-way or check valves, or an air gap sufficient to prevent contamination.

(2) *Soap and single-use towels.* The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) *Clean change of clothing.* The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(c) *Location.* The decontamination supplies must be located together outside of any treated area, and be reasonably accessible to and not more than 1/4 mile from each handler during the handler activity.

(1) *Exception for mixing sites.* For mixing activities, decontamination supplies must be at the mixing site.

(2) *Exception for pilots.* Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(3) *Exception for handling pesticides in remote areas.* Where handler activities are performed more than 1/4 mile from the nearest place of vehicular access, the soap, single-use towels, clean change of clothing, and water may be at the nearest place of vehicular access.

(4) *Exception for treated areas.* The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless all of the following conditions are met:

(i) The soap, single-use towels, and clean change of clothing are protected from pesticide contamination in closed containers.

(ii) The water is protected from pesticide contamination in closed containers.

(d) *Emergency eyeflushing.* If the product label requires protective eyewear for handlers, the following requirements apply.

(1) To provide for emergency eyeflushing, the handler employer must provide at least 1 pint of water per handler in portable containers that are immediately available to each handler who is performing activities for which the pesticide labeling requires protective eyewear.

(2) A system capable of delivering at least 1.5 liters (0.4 gallons) of water per minute for 15 minutes must be provided at all permanent pesticide mixing and loading sites when the label requires protective eyewear for mixing, loading, or applying.

## Subpart D—Exemptions and Exceptions

**§ 170.301 Exemptions.**

(a) *Exemption for owners of agricultural establishments and their immediate families.* (1) On any agricultural establishment that is wholly owned by an individual, or where all of the owners of the establishment are members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following provisions to themselves or members of their immediate family when they are performing handling tasks or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) § 170.9(c).

(ii) § 170.9(f) through (j).

(iii) § 170.11.

(iv) § 170.101.

(v) § 170.103.

(vi) § 170.109.

(vii) § 170.111 and 170.209.

(viii) § 170.201.

(ix) § 170.203.

(x) § 170.205(c) and (d).

(xi) § 170.207(c) through (e).

(xii) § 170.305(a) through (c) and (e) through (k).

(2) The owners of agricultural establishments must provide all of the applicable protections required by this part for any employees or other persons on the establishment that are not members of their immediate family.

(b) *Certified crop advisors.* The requirements of §§ 170.9(e), 170.203(a), 170.207 and 170.209 of this part do not apply to certified crop advisors provided the application is complete and all of the following conditions are met:

(1) The crop advisor is certified or licensed as a crop advisor by a program acknowledged as appropriate in writing by EPA or a state or tribal agency responsible for pesticide enforcement.

(2) The certification or licensing program requires pesticide safety training that includes all the information in § 170.201(c)(2) and (3).

(3) The crop advisor who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

**§ 170.303 Exceptions for entry by workers during restricted-entry intervals.**

An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, and provided that the agricultural employer ensures that the worker is at least 16 years old and all of the applicable conditions of this section and § 170.305 of this part are met.

(a) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(2) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.105(b)(3) or the pesticide product labeling have been met.

(b) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

(1) No hand labor activity is performed.

(2) The time in treated areas where a restricted-entry interval is in effect does not exceed 1 hour in any 24-hour period for any worker.

(3) No such entry is allowed during the first 4 hours after the application ends.

(4) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.105(b)(3) or the pesticide product labeling have been met.

(c) *Exception for an agricultural emergency.* (1) An agricultural emergency means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the agricultural employer has no control, and which requires entry into a treated area during a restricted-entry interval, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

(2) A worker may enter a treated area where a restricted-entry interval is in effect in an agricultural emergency to perform tasks necessary to mitigate the effects of the agricultural emergency, including hand labor tasks, if the agricultural employer ensures that all the following criteria are met:

(i) EPA, the state department of agriculture, or the state or tribal agency responsible for pesticide enforcement declares the existence of circumstances that could cause an agricultural emergency on that agricultural establishment.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of paragraph (c)(1) of this section.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than 4 hours out of any 24-hour period in treated areas where such a restricted-entry interval is in effect.

(d) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(1) No hand labor activity is performed.

(2) No worker is allowed in the treated area for more than 8 hours in a 24-hour period.

(3) No entry is allowed during the first 4 hours after the application ends.

(4) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.105(b)(3) or the pesticide product labeling have been met.

(5) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial economic loss, and there are no alternative tasks that would prevent substantial loss.

(6) With the exception of irrigation tasks, the need for the task could not have been foreseen.

(7) The worker has no contact with pesticide-treated surfaces other than minimal contact with feet, lower legs, hands, and forearms.

(8) The label of the product that was applied does not require both posting and oral notification.

**§ 170.305 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval.**

If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(a) Prior to early entry, the agricultural employer must inform each early entry worker with the information in paragraphs (a)(1) through (9) of this section. The information must be provided orally in a manner that the worker can understand.

(1) Date of the entry.

(2) Location of early entry area.

(3) Pesticide(s) applied.

(4) Dates and times that the restricted-entry interval begins and ends.

(5) Which exception in § 170.303 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(6) Whether contact with treated surfaces is permitted under the exception.

(7) Amount of time the worker is allowed to remain in the treated area.

(8) Personal protective equipment required by the pesticide product labeling for early entry.

(9) Location of the pesticide safety information and the location of the decontamination supplies required by §§ 170.11(a)(1) and 170.111(d).

(b) The agricultural employer must maintain on the agricultural establishment for 2 years a record of the information provided to early entry workers under paragraph (a) of this section, along with the printed name, date of birth, and signature of each early entry worker who received the information.

(c) Prior to early entry, the agricultural employer must ensure that each worker either has read the pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(d) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry workers. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other requirements on the pesticide product labeling regarding early entry. Personal protective equipment must conform to the standards in § 170.207(b)(1) through (8).

(e) The agricultural employer must maintain the personal protective equipment in accordance with § 170.207(d)(1) through (8).

(f) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment, without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.

(g) The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(h) During any early entry activity, the agricultural employer must provide decontamination supplies in accordance with § 170.209, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to those workers.

(i) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least 1 pint of water per worker in portable containers that are immediately available to each worker who is performing early entry activities for emergency eyeflushing.

(j) At the end of any early entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and at least 3 gallons of water per worker so that the workers may wash thoroughly.

**§ 170.307 Exceptions to personal protective equipment requirements specified on pesticide product labeling.**

(a) *Body protection.* (1) A chemical-resistant suit may be substituted for coveralls, and any requirement for an additional layer of clothing beneath the coveralls is waived.

(2) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(b) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(c) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(d) *Closed systems.* (1) When pesticides are being mixed or loaded using a closed system as defined in § 170.5 that meets all of the criteria in paragraph (d)(2) of this section, and the handler employer meets the requirements of paragraph (d)(3) of this section, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of ''DANGER'' or ''WARNING'' may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in paragraph (d)(1)(i) of this section may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(2) The exceptions of paragraph (d)(1) of this section apply only where the closed system meets all of the following criteria:

(i) The pesticide must be removed from its original shipping container and transferred through connecting hoses pipes, and/or couplings that are sufficiently tight to prevent exposure of any person to the concentrate, use dilution, or rinse solution.

(ii) All hoses, piping, tanks, and connections used in conjunction with a closed system must be of a type appropriate for the pesticide being used and, the pressure and vacuum of the system.

(iii) All sight gauges must be protected against breakage. Sight gauges must be equipped with valves so the pipes to the sight gauge can be shut off in case of breakage or leakage.

(iv) The closed system must adequately measure the pesticide being used. Measuring devices must be accurately calibrated to the smallest unit in which the material is being weighed or measured.

(v) The movement of a pesticide concentrate beyond a pump by positive pressure must not exceed 25 pounds per square inch (psi) of pressure.

(vi) A probe must not be removed from a container except when the pesticide is used without dilution and the container has been emptied or the container is emptied and the inside, as well as the probe, have been rinsed in accordance with § 170.307(d)(2)(viii).

(vii) Shut-off devices must be installed on the exit end of all hoses and at all disconnect points to prevent the pesticide from leaking when the transfer is stopped and the hose is removed or disconnected. If the hose carried pesticide concentrate and has not been rinsed in accordance with § 170.307(d)(2)(viii), a dry break coupler that will minimize pesticide loss to not more than two milliliters per disconnect must be installed at the disconnect point. If the hose carried a pesticide use dilution or rinse solution, a reversing action pump or a similar system that will empty the hose may be used as an alternative to a shutoff device.

(viii) When the pesticide is to be diluted for use, the closed system must provide for adequate rinsing of containers that have held less than 60 gallons of a liquid pesticide. Rinsing must be done with a medium, such as water, that contains no pesticide. The system must be capable of spray-rinsing the inner surfaces of the container and the rinse solution must go into the pesticide mix tank or applicator vehicle via the closed system. The system must be capable of rinsing the probe, if used, and all hoses, measuring devices, etc. A minimum of 15 psi of pressure must be used for rinsing. The rinsing must be continued until minimum of 10 gallons or one-half of the container volume, whichever is less, has been used. The rinse solution must be removed from the pesticide container concurrently with introduction of the rinse medium. Pesticide containers must be protected against excessive pressure during the container rinse operation. The maximum container pressure must not exceed five psi.

(ix) Each commercially produced closed system or component to be used with a closed system must be sold with complete instructions consisting of a functional operating manual and a decal(s) covering the basic operation. The decal(s) must be placed in a prominent location on the system. The system must include specific directions for cleaning and maintenance of the system on a scheduled basis and information on any restrictions or limitations relating to the system, such as pesticides that are incompatible with materials used in the construction of the system, types (or sizes) of containers or closures that cannot be handled by the system, any limits on ability to correct or over measurement of a pesticide, or special procedures or limitations on the ability of the system to deal with partial containers

(3) The exceptions of paragraph (d)(1) of this section apply only where the handler employer has satisfied the requirements of § 170.13 and all of the following conditions:

(i) The written operating instructions for the closed system must be available

at the mixing or loading site and must be made available to any handlers who use the system and for inspection by authorized officials.

(ii) The handler employer must assure that any handler operating the closed system is trained in its use and operates the closed system in accordance with the manufacturer's written operating instructions.

(iii) The closed system must be cleaned and maintained as specified in the manufacturer's written operating instructions and as needed to make sure the system functions properly. If the system is not a commercially produced system it must be maintained on a regular basis.

(iv) A record of the cleaning and maintenance must be maintained on the establishment for 2 years.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) The handler employer ensures that protective eyewear is worn when using closed systems operating under pressure.

(e) *Enclosed cabs.* (1) If a handler applies a pesticide from inside an enclosed cab, and if the conditions listed in paragraph (e)(2) of this section are met, handlers may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(2) All of the applicator personal protective equipment required by the pesticide product labeling must be immediately available and stored in an enclosed container, such as a plastic bag, to prevent contamination. Handlers must wear chemical-resistant gloves in addition to any personal protective equipment required by the pesticide product labeling for applicators, if they exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in a treated area, it must be removed before reentering the cab.

(f) *Aerial applications*—(1) *Use of gloves.* Chemical-resistant gloves must be worn when entering or leaving an aircraft that may be contaminated by pesticide residues. In the cockpit, the gloves must be kept in an enclosed container, such as a plastic bag, to prevent contamination of the inside of the cockpit.

(2) *Open cockpit.* Handlers occupying an open cockpit must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(3) *Enclosed cockpit.* Handlers occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(g) *Crop advisors.* Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early entry activities instead of the personal protective equipment specified on the pesticide labeling for handler activities, provided that all of the following conditions are met:

(1) The application has been complete for at least 4 hours.

(2) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required by § 170.105(b)(3) or the pesticide product labeling have been met.

**§ 170.309 Exception to training requirements for workers.**

An agricultural employer may allow or direct a worker to perform tasks in a treated area on an agricultural establishment for up to two days without training the worker in accordance with § 170.101 provided the agricultural employer ensures all of the conditions of this section are met.

(a) The worker is trained in accordance with § 170.101 before the third day of working in a treated area on the establishment.

(b) The worker will not enter a treated area on the agricultural establishment while any restricted-entry interval is in effect.

(c) The worker is provided with a copy of a pesticide information sheet that contains all of the points and information listed in § 170.309(e)(1) through (15) prior to conducting any tasks in a treated area, and that same information is communicated to the worker orally in a manner the worker understands.

(d) The agricultural employer must maintain on the agricultural establishment for a period of 2 years a record of the information provided to the worker under § 170.309(c), along with the printed name of the worker, date of birth, the date the information was provided, the employer's name, and employer's phone number or phone number of the establishment, and signature of the worker affirming that he or she has been provided a copy of the information sheet required by § 170.309(c), has had the information communicated to him or her orally in a manner the worker understands, and has understood the information.

(e) Pesticide information sheets required by § 170.309(c) must convey the following points and information:

(1) Agricultural employers are required to provide workers with information and protections designed to reduce work-related pesticide exposures and illnesses, including the following:

(i) Employers are required to provide pesticide safety information to workers before being asked to work in pesticide treated areas if they have not received full pesticide safety training.

(ii) Employers are required to provide the full pesticide safety training to workers before their third day of work in pesticide treated areas.

(iii) Employers are required to provide pesticide safety information, pesticide hazard information for products used on the establishment, decontamination supplies, emergency medical assistance, and notification to workers of restrictions during applications and on entering pesticide treated areas.

(2) Agricultural employers must inform workers how to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment. Workers must follow employer directions and/or signs about keeping out of entry restricted or pesticide treated areas.

(3) Agricultural employers must not allow or direct any worker who has not received full pesticide safety training and additional early entry worker training to work in any area that is currently under a restricted-entry interval. Employers must comply with minimum age restrictions and notification requirements in order to direct workers to perform early-entry activities.

(4) Agricultural employers must not allow or direct any worker to mix, load, or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(5) Agricultural employers are prohibited from intimidating, threatening, coercing, or discriminating against any worker for the purposes of interfering with any attempt to comply with the requirements of this part, or because the worker has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this part.

(6) There are potential sources of pesticide exposure on agricultural

establishments and pesticides and/or pesticide residues may be encountered during work activities. Pesticide residues may be on or in plants, soil, irrigation water, tractors, application equipment, or used personal protective equipment. Pesticides can also drift through air from nearby applications. Maintain a safe distance from nearby pesticide applications and leave the area immediately if pesticide sprays are contacting you.

(7) Pesticides can cause illness or injury if they enter your body. Pesticides can enter the body by getting them on your skin or in your eyes, by swallowing them, or by breathing in their vapors.

(8) There are potential hazards from toxicity and exposure that pesticides present to workers, including acute and chronic illnesses and effects, delayed effects, and sensitization.

(9) There are potential hazards to children and pregnant women from pesticide exposure.

(10) When working near pesticides or in pesticide treated areas wear work clothing that protects the body from pesticide residues and always wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(11) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working near or in pesticide treated areas.

(12) There are potential hazards from the pesticide residues that may be on work clothing. Wash work clothes before wearing them again, and always wash work clothes separately from other clothes.

(13) Pesticides may cause skin rashes or hurt your eyes, nose or throat. Pesticides can make you feel sick in different ways, such as headache or dizziness, muscles pain or cramps, nausea or vomiting, sweating, drooling, fatigue, or trouble breathing.

(14) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. Shower, shampoo hair, and change into clean clothes as soon as possible. If a pesticide gets in your eyes, hold them open and rinse with a gentle stream of cool water. Rinse eyes for 15 minutes.

(15) If you or someone you work with gets sick while working, tell your employer right away. If you suspect you have been injured or made ill from pesticides, get medical help as soon as possible. If you have been injured from pesticides while working, your employer must provide emergency transportation from the establishment to a nearby medical facility and provide information about the pesticide or pesticides that may have made you sick.

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# FEDERAL REGISTER

Vol. 79 Wednesday,

No. 53 March 19, 2014


Part IV

## The President

Executive Order 13661—Blocking Property of Additional Persons Contributing to the Situation in Ukraine

Federal Register
Vol. 79, No. 53
Wednesday, March 19, 2014

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13661 of March 16, 2014**

## Blocking Property of Additional Persons Contributing to the Situation in Ukraine

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13660 of March 6, 2014, finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine—including the recent deployment of Russian Federation military forces in the Crimea region of Ukraine—undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. Accordingly, I hereby order:

**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to be an official of the Government of the Russian Federation;

(B) to operate in the arms or related materiel sector in the Russian Federation;

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly:

(1) a senior official of the Government of the Russian Federation; or

(2) a person whose property and interests in property are blocked pursuant to this order; or

(D) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of:

(1) a senior official of the Government of the Russian Federation; or

(2) a person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

**Sec. 2.** I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United

States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

**Sec. 3.** I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13660, and I hereby prohibit such donations as provided by section 1 of this order.

**Sec. 4.** The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

**Sec. 5.** (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 6.** For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term the ''Government of the Russian Federation'' means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, including the Central Bank of the Government of the Russian Federation, and any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation.

**Sec. 7.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13660, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

**Sec. 8.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

**Sec. 9.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person

listed in the Annex to this order, and to take necessary action to give effect to that determination.

**Sec. 10.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 11.** This order is effective at 12:01 a.m. eastern daylight time on March 17, 2014.

THE WHITE HOUSE,

*March 16, 2014.*

Billing code 3295–F4–P

## ANNEX

1. Yelena Mizulina [State Duma Deputy, born December 9, 1954]
2. Leonid Slutsky [State Duma Deputy, born January 4, 1968]
3. Andrei Klishas [Chairman of the Russian Federation Council Committee on Constitutional Law, Judicial and Legal Affairs and the Development of Civil Society, born November 9, 1972]
4. Valentina Ivanovna Matviyenko [Federation Council Speaker, born April 7, 1949]
5. Dmitry Olegovich Rogozin [Deputy Prime Minister of the Russian Federation, born December 21, 1963]
6. Vladislav Yurievich Surkov [Presidential Aide to the President of the Russian Federation, born September 21, 1964]
7. Sergey Glazyev [Presidential Advisor to the President of the Russian Federation, born January 1, 1961]

[FR Doc. 2014–06141

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Billing code 4811–33–C

# Reader Aids

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