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FEDERAL REGISTER

Vol. 79 Tuesday,
No. 150 August 5, 2014

Pages 45309–45670

OFFICE OF THE FEDERAL REGISTER

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Contents

Federal Register

Vol. 79, No. 150

Tuesday, August 5, 2014

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Importation of Eggplant from Israel, 45422
Virus–Serum–Toxin Act and Regulations, 45422–45423

Army Department
See Engineers Corps

Centers for Medicare & Medicaid Services
RULES
Medicare Programs:
Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015, 45628–45659

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Refugee Assistance Program Estimates, 45445–45446

Civil Rights Commission
NOTICES
Meetings:
Connecticut Advisory Committee, 45424
Delaware Advisory Committee, 45423–45424

Coast Guard
RULES
Drawbridge Operations:
Lake Washington Ship Canal, Seattle, WA, 45344
Willamette River, Portland, OR, 45344–45346
NOTICES
Change-1 to the Marine Safety Manual, Volume III; Availability, 45451–45452

Commerce Department
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45424–45426

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 45429

Community Living Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Senior Legal Helplines Operating within Model Approaches to Statewide Legal Assistance Systems Demonstrations, 45446–45447

Copyright Royalty Board
PROPOSED RULES
Use of Sound Recordings under Statutory License, 45393

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45429–45430

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplements:
Foreign Commercial Satellite Services, 45662–45665
PROPOSED RULES
Defense Federal Acquisition Regulation Supplements:
State Sponsors of Terrorism, 45666–45669

Defense Department
See Defense Acquisition Regulations System
See Engineers Corps
PROPOSED RULES
Federal Acquisition Regulations:
Uniform Use of Line Items, 45408–45412

Education Department
RULES
Final Priorities:
Technical Assistance on State Data Collection—Individuals with Disabilities Education Act Data Management Center, 45346–45350
NOTICES
Applications for New Awards:
Technical Assistance on State Data Collection; Individual with Disabilities Education Act Data Management Center, 45430–45437

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program for Certain Commercial and Industrial Equipment:
Gas Compressors, Request for Information, 45377–45380
Energy Conservation Program for Consumer Products:
Energy Conservation Standards for Computer and Battery Backup Systems, 45377

Engineers Corps
NOTICES
Inclusion Proposals:
Feasibility Studies and Modifications to Authorized USACE Water Resources Development Projects or Feasibility Studies, 45430

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Delaware; Redesignation Requests, Associated Maintenance Plans, and Motor Vehicle Emissions Budgets, etc., 45350–45354
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Montana; Exclusion for De Minimis Changes, 45393–45395
Pennsylvania; Control of Outdoor Wood-Fired Boilers, 45395–45397

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45441–45442
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington, 45443–45444
Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 45443
NESHAP for Marine Tank Vessel Loading Operations, 45442–45443
NESHAP for Solvent Extraction for Vegetable Oil Production, 45444–45445

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
AgustaWestland S.p.A. Helicopters, 45329–45332
Airbus Airplanes, 45317–45322
Airbus Helicopters, Previously Eurocopter France, 45335–45337
Fuji Heavy Industries, Ltd. Airplanes, 45327–45329
MD Helicopters, Inc., Helicopters, 45322–45324
Mooney International Corp. Airplanes, 45332–45334
Saab AB, Saab Aerosystems Airplanes, 45337–45340
The Boeing Company Airplanes, 45324–45327, 45340–45344
PROPOSED RULES
Airworthiness Directives:
Pacific Aerospace Limited Airplanes, 45383–45385
The Boeing Company Airplanes, 45385–45387
NOTICES
Meetings:
RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems, 45583
RTCA Special Committee 232, Airborne Selective Calling Equipment, 45583–45584

Federal Communications Commission
RULES
Closed Captioning of Internet Protocol-Delivered Video Programming:
Implementation of the Twent-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips, 45354–45371
Rules in the 904–909.75 and 919.75–928 MHz Bands, 45371–45372
PROPOSED RULES
Closed Captioning of Internet Protocol-Delivered Video Programming:
Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips, 45397–45407

Federal Deposit Insurance Corporation
PROPOSED RULES
Possession by Conservators and Receivers for Federal and State Savings Associations:
Removal of Transferred OTS Regulations, 45380–45383
Transferred OTS Regulations; Withdrawal, 45380

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45437–45439
Applications:
Texas Gas Transmission, LLC, 45439
Combined Filings, 45439–45440
Environmental Impact Statements; Availability, etc.:
York Haven Power Co. and Exelon Generation Co.; Susquehanna River Hydroelectric Projects, 45440
General Conformity Analysis:
Freeport LNG Liquefaction Project and Phase II Modification Project, 45441
Meetings:
Newburgh Hydro, LLC and Uniontown Hydro, LLC; Teleconference, 45441

Federal Highway Administration
NOTICES
Categorical Exclusions:
Willits Bypass Project, Willits, CA; Ryan Creek Fish Passage Mitigation Project, 45584

Federal Motor Carrier Safety Administration
NOTICES
Meetings; Sunshine Act, 45584

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45585–45586

Federal Reserve System
NOTICES
Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities, 45445

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse with Special Rule, 45420–45421
NOTICES
Environmental Assessment; Availability, etc.:
National Bison Range Complex, Moiese, MT; Proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes, 45452–45456

Food and Drug Administration
NOTICES
Guidance:
Design Considerations for Devices Intended for Home Use, 45447–45448
Reference Product Exclusivity for Biological Products Filed Under Section 351(a) of the Public Health Service Act; Availability, 45448–45450

General Services Administration
PROPOSED RULES
Federal Acquisition Regulations:
Uniform Use of Line Items, 45408–45412

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Community Living Administration
See Food and Drug Administration

See National Institutes of Health

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
NOTICES
Reservation Proclamations:
Stillaguamish Tribe of Indians of Washington, 45456–45457

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Malleable Iron Pipe Fittings from China, 45460

Justice Department
PROPOSED RULES
Grants to Encourage Arrest Policies and Enforcement of Protection Orders, 45387–45390
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2014 National Survey of Prosecutors, 45463–45464
Controlled Substances Import/Export Declaration, 45461–45462
Registrants Inventory of Drugs Surrendered, 45460–45461
Report of Theft or Loss of Controlled Substances, 45461
Survey of Juveniles Charged in Adult Criminal Court; 2014, 45462–45463

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of the Army Unemployment Compensation for Ex-Servicemembers Claimants Initiative, 45464–45465
Meetings:
Labor Advisory Committee for Trade Negotiations and Trade Policy; Bureau of International Labor Affairs, 45465

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 45457
Plats of Survey:
Eastern States, 45457–45458

Library of Congress
See Copyright Royalty Board

Mine Safety and Health Administration
NOTICES
Petitions:
Modification of Application to Existing Mandatory Safety Standards, 45465–45468

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulations:
Uniform Use of Line Items, 45408–45412

National Archives and Records Administration
NOTICES
Records Schedules, 45468–45469

National Highway Traffic Safety Administration
RULES
Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards, 45373–45376
PROPOSED RULES
Motor Vehicle Theft Prevention Standard:
Preliminary Theft Data, 45412–45420
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45586–45587
Federal Motor Vehicle Motor Theft Prevention Standards; Petitions for Exemption:
Tesla Motors, Inc., 45587–45588
Federal Vehicle Theft Prevention Standards; Petitions for Exemption:
Nissan North America, Inc., 45588–45590

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 45450
National Institute on Aging, 45450–45451

National Oceanic and Atmospheric Administration
NOTICES
Endangered and Threatened Species:
Take of Anadromous Fish, 45426–45427
Permits:
Marine Mammals; File No. 14241, 45427
Requests for Nominations; Meetings:
National Sea Grant Advisory Board, 45427–45428
Takes of Marine Mammals Incidental to Specified Activities:
Low-Energy Marine Geophysical Survey in the Scotia Sea and South Atlantic Ocean, September to October 2014, 45592–45625
Seismic Surveys in Cook Inlet, AK, 45428–45429

National Park Service
PROPOSED RULES
Concession Contracts, 45390–45393
NOTICES
Extension and Continuation of Concession Contracts, 45458–45459

National Science Foundation
NOTICES
Meetings:
Proposal Review, 45469–45470

Nuclear Regulatory Commission
NOTICES
Facility Operating Licenses:
Applications and Amendments Involving Proposed No Significant Hazards Considerations, 45470–45484
Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 45484–45495

Inspections, Tests, Analyses, and Acceptance Criteria:
Virgil C. Summer Nuclear Station Unit 2, 45495–45496
Standard Review Plans:
Chilled Water; Proposed Revisions, 45498–45499
Light Load Handling System and Refueling Cavity Design, 45496–45497
Maintenance Rule, 45497–45498

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Assignment, Federal Employees Group Life Insurance Program, 45499
Disabled Dependent Questionnaire, 45500

Postal Regulatory Commission
NOTICES
Postal Products; Amendment, 45500–45501

Presidential Documents
EXECUTIVE ORDERS
Government Agencies and Employees:
Fair Pay and Safe Workplaces Among Federal Contractors (EO 13673), 45309–45315

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Northwest Area Water Supply Project, 45459

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45501–45502
Meetings; Sunshine Act, 45502
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 45560–45562
Chicago Stock Exchange, Inc., 45570–45572
ICE Clear Credit LLC, 45565–45570
Municipal Securities Rulemaking Board, 45529–45534, 45546–45556
NASDAQ OMX BX, Inc, 45521–45523
NASDAQ OMX BX, Inc., 45515–45521
NASDAQ OMX PHLX LLC, 45544–45546
New York Stock Exchange LLC, 45511–45513, 45562–45565
NYSE Arca, Inc., 45572–45581
NYSE MKT LLC, 45502–45506, 45513–45515
Options Clearing Corp., 45523–45529
The NASDAQ Stock Market LLC, 45506–45511, 45535–45544, 45556–45560

Small Business Administration
NOTICES
Disaster Declarations:
Nebraska, 45582
South Dakota, 45581–45582

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45459–45460

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
NOTICES
Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Applications, 45582–45583

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 45592–45625

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 45628–45659

Part IV
Defense Department, Defense Acquisition Regulations System, 45662–45669

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13673 45309

10 CFR

Proposed Rules:

430 45377
431 45377

12 CFR

Proposed Rules:

390 (2 documents) 45380

14 CFR

39 (9 documents) 45317, 45322, 45324, 45327, 45329, 45332, 45335, 45337, 45340

Proposed Rules:

39 (2 documents) 45383, 45385

28 CFR

Proposed Rules:

0 45387
90 45387

33 CFR

117 (3 documents) 45344, 45345

34 CFR

Ch. III 45346

36 CFR

Proposed Rules:

51 45390

37 CFR

Proposed Rules:

370 ..... 45393, 45395

40 CFR

52 45350
81 45350

Proposed Rules:

52 (2 documents) 45393, 45395

42 CFR

488 45628

47 CFR

79 45354
90 45371

Proposed Rules:

79 45397

48 CFR

204 45662
212 45662
225 45662
252 45662

Proposed Rules:

2 45408
3 45408
4 45408
5 45408
7 45408
8 45408
14 45408
15 45408
16 45408
52 45408
204 45666
209 45666
212 45666
225 45666
252 45666

49 CFR

592 45373

Proposed Rules:

541 45412

50 CFR

Proposed Rules:

17 45420

Federal Register
Vol. 79, No. 150
Tuesday, August 5, 2014

Presidential Documents

Title 3—

The President

Executive Order 13673 of July 31, 2014

Fair Pay and Safe Workplaces

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to promote economy and efficiency in procurement by contracting with responsible sources who comply with labor laws, it is hereby ordered as follows:

Section 1. *Policy.* This order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws. Labor laws are designed to promote safe, healthy, fair, and effective workplaces. Contractors that consistently adhere to labor laws are more likely to have workplace practices that enhance productivity and increase the likelihood of timely, predictable, and satisfactory delivery of goods and services to the Federal Government. Helping executive departments and agencies (agencies) to identify and work with contractors with track records of compliance will reduce execution delays and avoid distractions and complications that arise from contracting with contractors with track records of noncompliance.

Sec. 2. *Compliance with Labor Laws.* (a) Pre-award Actions. (i) For procurement contracts for goods and services, including construction, where the estimated value of the supplies acquired and services required exceeds $500,000, each agency shall ensure that provisions in solicitations require that the offeror represent, to the best of the offeror's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judgment, as defined in guidance issued by the Department of Labor, rendered against the offeror within the preceding 3-year period for violations of any of the following labor laws and Executive Orders (labor laws):

(A) the Fair Labor Standards Act;

(B) the Occupational Safety and Health Act of 1970;

(C) the Migrant and Seasonal Agricultural Worker Protection Act;

(D) the National Labor Relations Act;

(E) 40 U.S.C. chapter 31, subchapter IV, also known as the Davis-Bacon Act;

(F) 41 U.S.C. chapter 67, also known as the Service Contract Act;

(G) Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity);

(H) section 503 of the Rehabilitation Act of 1973;

(I) 38 U.S.C. 3696, 3698, 3699, 4214, 4301–4306, also known as the Vietnam Era Veterans' Readjustment Assistance Act of 1974;

(J) the Family and Medical Leave Act;

(K) title VII of the Civil Rights Act of 1964;

(L) the Americans with Disabilities Act of 1990;

(M) the Age Discrimination in Employment Act of 1967;

(N) Executive Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors); or

(O) equivalent State laws, as defined in guidance issued by the Department of Labor.

(ii) A contracting officer, prior to making an award, shall, as part of the responsibility determination, provide an offeror with a disclosure pursuant to section 2(a)(i) of this order an opportunity to disclose any steps taken to correct the violations of or improve compliance with the labor laws listed in paragraph (i) of this subsection, including any agreements entered into with an enforcement agency. The agency's Labor Compliance Advisor, as defined in section 3 of this order, in consultation with relevant enforcement agencies, shall advise the contracting officer whether agreements are in place or are otherwise needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further violations, or other related matters.

(iii) In consultation with the agency's Labor Compliance Advisor, contracting officers shall consider the information provided pursuant to paragraphs (i) and (ii) of this subsection in determining whether an offeror is a responsible source that has a satisfactory record of integrity and business ethics, after reviewing the guidelines set forth by the Department of Labor and consistent with any final rules issued by the Federal Acquisition Regulatory (FAR) Council pursuant to section 4 of this order.

(iv) For any subcontract where the estimated value of the supplies acquired and services required exceeds $500,000 and that is not for commercially available off-the-shelf items, a contracting officer shall require that, at the time of execution of the contract, a contractor represents to the contracting agency that the contractor:

(A) will require each subcontractor to disclose any administrative merits determination, arbitral award or decision, or civil judgment rendered against the subcontractor within the preceding 3-year period for violations of any of the requirements of the labor laws listed in paragraph (i) of this subsection, and update the information every 6 months; and

(B) before awarding a subcontract, will consider the information submitted by the subcontractor pursuant to subparagraph (A) of this paragraph in determining whether a subcontractor is a responsible source that has a satisfactory record of integrity and business ethics, except for subcontracts that are awarded or become effective within 5 days of contract execution, in which case the information may be reviewed within 30 days of subcontract award.

(v) A contracting officer shall require that a contractor incorporate into subcontracts covered by paragraph (iv) of this subsection a requirement that the subcontractor disclose to the contractor any administrative merits determination, arbitral award or decision, or civil judgment rendered against the subcontractor within the preceding 3-year period for violations of any of the requirements of the labor laws listed in paragraph (i) of this subsection.

(vi) A contracting officer, Labor Compliance Advisor, and the Department of Labor (or other relevant enforcement agency) shall be available, as appropriate, for consultation with a contractor to assist in evaluating the information on labor compliance submitted by a subcontractor pursuant to paragraph (v) of this subsection.

(vii) As appropriate, contracting officers in consultation with the Labor Compliance Advisor shall refer matters related to information provided pursuant to paragraphs (i) and (iv) of this subsection to the agency suspending and debarring official in accordance with agency procedures.

(b) Post-award Actions. (i) During the performance of the contract, each agency shall require that every 6 months contractors subject to this order update the information provided pursuant to subsection (a)(i) of this section and obtain the information required pursuant to subsection (a)(v) of this section for covered subcontracts.

(ii) If information regarding violations of labor laws is brought to the attention of a contracting officer pursuant to paragraph (i) of this subsection, or similar information is obtained through other sources, a contracting officer shall consider whether action is necessary in consultation with the agency's Labor Compliance Advisor. Such action may include agreements requiring appropriate remedial measures, compliance assistance, and resolving issues to avoid further violations, as well as remedies such as decisions not to exercise an option on a contract, contract termination, or referral to the agency suspending and debarring official.

(iii) A contracting officer shall require that if information regarding violations of labor laws by a contractor's subcontractor is brought to the attention of the contractor pursuant to subsections (a)(iv), (v) or (b)(i) of this section or similar information is obtained through other sources, then the contractor shall consider whether action is necessary. A contracting officer, Labor Compliance Advisor, and the Department of Labor shall be available for consultation with a contractor regarding appropriate steps it should consider. Such action may include appropriate remedial measures, compliance assistance, and resolving issues to avoid further violations.

(iv) The Department of Labor shall, as appropriate, inform contracting agencies of its investigations of contractors and subcontractors on current Federal contracts so that the agency can help the contractor determine the best means to address any issues, including compliance assistance and resolving issues to avoid or prevent violations.

(v) As appropriate, contracting officers in consultation with the Labor Compliance Advisor shall send information provided pursuant to paragraphs (i)–(iii) of this subsection to the agency suspending and debarring official in accordance with agency procedures.

Sec. 3. *Labor Compliance Advisors.* Each agency shall designate a senior agency official to be a Labor Compliance Advisor, who shall:

(a) meet quarterly with the Deputy Secretary, Deputy Administrator, or equivalent agency official with regard to matters covered by this order;

(b) work with the acquisition workforce, agency officials, and agency contractors to promote greater awareness and understanding of labor law requirements, including recordkeeping, reporting, and notice requirements, as well as best practices for obtaining compliance with these requirements;

(c) coordinate assistance for agency contractors seeking help in addressing and preventing labor violations;

(d) in consultation with the Department of Labor or other relevant enforcement agencies, and pursuant to section 4(b)(ii) of this order as necessary, provide assistance to contracting officers regarding appropriate actions to be taken in response to violations identified prior to or after contracts are awarded, and address complaints in a timely manner, by:

(i) providing assistance to contracting officers and other agency officials in reviewing the information provided pursuant to sections 2(a)(i), (ii), and (v) and 2(b)(i), (ii), and (iii) of this order, or other information indicating a violation of a labor law, so as to assess the serious, repeated, willful, or pervasive nature of any violation and evaluate steps contractors have taken to correct violations or improve compliance with relevant requirements;

(ii) helping agency officials determine the appropriate response to address violations of the requirements of the labor laws listed in section 2(a)(i) of this order or other information indicating such a labor violation (particularly serious, repeated, willful, or pervasive violations), including agreements requiring appropriate remedial measures, decisions not to award a contract or exercise an option on a contract, contract termination, or referral to the agency suspending and debarring official;

(iii) providing assistance to appropriate agency officials in receiving and responding to, or making referrals of, complaints alleging violations by

agency contractors and subcontractors of the requirements of the labor laws listed in section 2(a)(i) of this order; and

(iv) supporting contracting officers, suspending and debarring officials, and other agency officials in the coordination of actions taken pursuant to this subsection to ensure agency-wide consistency, to the extent practicable;

(e) as appropriate, send information to agency suspending and debarring officials in accordance with agency procedures;

(f) consult with the agency's Chief Acquisition Officer and Senior Procurement Executive, and the Department of Labor as necessary, in the development of regulations, policies, and guidance addressing labor law compliance by contractors and subcontractors;

(g) make recommendations to the agency to strengthen agency management of contractor compliance with labor laws;

(h) publicly report, on an annual basis, a summary of agency actions taken to promote greater labor compliance, including the agency's response pursuant to this order to serious, repeated, willful, or pervasive violations of the requirements of the labor laws listed in section 2(a)(i) of this order; and

(i) participate in the interagency meetings regularly convened by the Secretary of Labor pursuant to section 4(b)(iv) of this order.

Sec. 4. *Ensuring Government-wide Consistency.* In order to facilitate Government-wide consistency in implementing the requirements of this order:

(a) to the extent permitted by law, the FAR Council shall, in consultation with the Department of Labor, the Office of Management and Budget, relevant enforcement agencies, and contracting agencies, propose to amend the Federal Acquisition Regulation to identify considerations for determining whether serious, repeated, willful, or pervasive violations of the labor laws listed in section 2(a)(i) of this order demonstrate a lack of integrity or business ethics. Such considerations shall apply to the integrity and business ethics determinations made by both contracting officers and contractors pursuant to this order. In addition, such proposed regulations shall:

(i) provide that, subject to the determination of the agency, in most cases a single violation of law may not necessarily give rise to a determination of lack of responsibility, depending on the nature of the violation;

(ii) ensure appropriate consideration is given to any remedial measures or mitigating factors, including any agreements by contractors or other corrective action taken to address violations; and

(iii) ensure that contracting officers and Labor Compliance Advisors send information, as appropriate, to the agency suspending and debarring official, in accordance with agency procedures.

(b) the Secretary of Labor shall:

(i) develop guidance, in consultation with the agencies responsible for enforcing the requirements of the labor laws listed in section 2(a)(i) of this order, to assist agencies in determining whether administrative merits determinations, arbitral awards or decisions, or civil judgments were issued for serious, repeated, willful, or pervasive violations of these requirements for purposes of implementation of any final rule issued by the FAR Council pursuant to this order. Such guidance shall:

(A) where available, incorporate existing statutory standards for assessing whether a violation is serious, repeated, or willful; and

(B) where no statutory standards exist, develop standards that take into account:

(1) for determining whether a violation is ''serious'' in nature, the number of employees affected, the degree of risk posed or actual harm done by the violation to the health, safety, or well-being of a worker, the amount of damages incurred or fines or penalties assessed with

regard to the violation, and other considerations as the Secretary finds appropriate;

(2) for determining whether a violation is ''repeated'' in nature, whether the entity has had one or more additional violations of the same or a substantially similar requirement in the past 3 years;

(3) for determining whether a violation is ''willful'' in nature, whether the entity knew of, showed reckless disregard for, or acted with plain indifference to the matter of whether its conduct was prohibited by the requirements of the labor laws listed in section 2(a)(i) of this order; and

(4) for determining whether a violation is ''pervasive'' in nature, the number of violations of a requirement or the aggregate number of violations of requirements in relation to the size of the entity;

(ii) develop processes:

(A) for Labor Compliance Advisors to consult with the Department of Labor in carrying out their responsibilities under section 3(d) of this order;

(B) by which contracting officers and Labor Compliance Advisors may give appropriate consideration to determinations and agreements made by the Department of Labor and other agencies; and

(C) by which contractors may enter into agreements with the Department of Labor or other enforcement agency prior to being considered for contracts.

(iii) review data collection requirements and processes, and work with the Director of the Office of Management and Budget, the Administrator for General Services, and other agency heads to improve those processes and existing data collection systems, as necessary, to reduce the burden on contractors and increase the amount of information available to agencies;

(iv) regularly convene interagency meetings of Labor Compliance Advisors to share and promote best practices for improving labor law compliance; and

(v) designate an appropriate contact for agencies seeking to consult with the Department of Labor pursuant to this order;

(c) the Director of the Office of Management and Budget shall:

(i) work with the Administrator of General Services to include in the Federal Awardee Performance and Integrity Information System information provided by contractors pursuant to sections 2(a)(i) and (ii) and 2(b)(i) of this order, and data on the resolution of any issues related to such information; and

(ii) designate an appropriate contact for agencies seeking to consult with the Office of Management and Budget pursuant to this order;

(d) the Administrator of General Services, in consultation with other relevant agencies, shall develop a single Web site for Federal contractors to use for all Federal contract reporting requirements related to this order, as well as any other Federal contract reporting requirements to the extent practicable;

(e) in developing the guidance pursuant to subsection (b) of this section and proposing to amend the Federal Acquisition Regulation pursuant to subsection (a) of this section, the Secretary of Labor and the FAR Council, respectively, shall minimize, to the extent practicable, the burden of complying with this order for Federal contractors and subcontractors and in particular small entities, including small businesses, as defined in section 3 of the Small Business Act (15 U.S.C. 632), and small nonprofit organizations; and

(f) agencies shall provide the Administrator of General Services with the necessary data to develop the Web site described in subsection (d) of this section.

Sec. 5. *Paycheck Transparency.* (a) Agencies shall ensure that, for contracts subject to section 2 of this order, provisions in solicitations and clauses in contracts shall provide that, in each pay period, contractors provide all individuals performing work under the contract for whom they are required to maintain wage records under the Fair Labor Standards Act; 40 U.S.C. chapter 31, subchapter IV (also known as the Davis-Bacon Act); 41 U.S.C. chapter 67 (also known as the Service Contract Act); or equivalent State laws, with a document with information concerning that individual's hours worked, overtime hours, pay, and any additions made to or deductions made from pay. Agencies shall also require that contractors incorporate this same requirement into subcontracts covered by section 2 of this order. The document provided to individuals exempt from the overtime compensation requirements of the Fair Labor Standards Act need not include a record of hours worked if the contractor informs the individuals of their overtime exempt status. These requirements shall be deemed to be fulfilled if the contractor is complying with State or local requirements that the Secretary of Labor has determined are substantially similar to those required by this subsection.

(b) If the contractor is treating an individual performing work under a contract or subcontract subject to subsection (a) of this section as an independent contractor, and not an employee, the contractor must provide a document informing the individual of this status.

Sec. 6. *Complaint and Dispute Transparency.* (a) Agencies shall ensure that for all contracts where the estimated value of the supplies acquired and services required exceeds $1 million, provisions in solicitations and clauses in contracts shall provide that contractors agree that the decision to arbitrate claims arising under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment may only be made with the voluntary consent of employees or independent contractors after such disputes arise. Agencies shall also require that contractors incorporate this same requirement into subcontracts where the estimated value of the supplies acquired and services required exceeds $1 million.

(b) Subsection (a) of this section shall not apply to contracts or subcontracts for the acquisition of commercial items or commercially available off-the-shelf items.

(c) A contractor's or subcontractor's agreement under subsection (a) of this section to arbitrate certain claims only with the voluntary post-dispute consent of employees or independent contractors shall not apply with respect to:

(i) employees who are covered by any type of collective bargaining agreement negotiated between the contractor and a labor organization representing them; or

(ii) employees or independent contractors who entered into a valid contract to arbitrate prior to the contractor or subcontractor bidding on a contract covered by this order, except that a contractor's or subcontractor's agreement under subsection (a) of this section to arbitrate certain claims only with the voluntary post-dispute consent of employees or independent contractors shall apply if the contractor or subcontractor is permitted to change the terms of the contract with the employee or independent contractor, or when the contract is renegotiated or replaced.

Sec. 7. *Implementing Regulations.* In addition to proposing to amend the Federal Acquisition Regulation as required by section 4(a) of this order, the FAR Council shall propose such rules and regulations and issue such orders as are deemed necessary and appropriate to carry out this order, including sections 5 and 6, and shall issue final regulations in a timely fashion after considering all public comments, as appropriate.

Sec. 8. *Severability.* If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) 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. 10. *Effective Date.* This order shall become effective immediately and shall apply to all solicitations for contracts as set forth in any final rule issued by the FAR Council under sections 4(a) and 7 of this order.

THE WHITE HOUSE,
July 31, 2014.

[FR Doc. 2014–18561
Filed 8–4–14; 8:45 am]
Billing code 3295–F4

Rules and Regulations

Federal Register

Vol. 79, No. 150

Tuesday, August 5, 2014

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0807; Directorate Identifier 2011–NM–191–AD; Amendment 39–17888; AD 2014–13–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of silicon particles inside the oxygen generator manifolds, which had chafed from the mask hoses during installation onto the generator outlets. This AD requires identifying the part number and serial number of each passenger oxygen container, replacing the oxygen generator manifold of any affected oxygen container with a serviceable manifold, and performing an operational check of the manual mask release, and corrective actions if necessary. We are issuing this AD to detect and correct non-serviceable oxygen generator manifolds, which could reduce or block the oxygen supply and result in injury to passengers when oxygen supply is needed.

DATES: This AD becomes effective September 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2012-0807;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318 series airplanes and Model A319, A320, and A321 series airplanes. The SNPRM published in the **Federal Register** on February 10, 2014 (79 FR 7603). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on August 16, 2012 (77 FR 49386).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0083, dated May 16, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> During production of passenger oxygen containers, the manufacturer B/E Aerospace detected some silicon particles inside the oxygen generator manifolds. Investigation revealed that those particles (chips) had chafed from the mask hoses during installation onto the generator outlets. It was discovered that a defective mask hose installation device had caused the chafing.
>
> This condition, if not detected and corrected, could reduce or block the oxygen supply, possibly resulting in injury to passengers when oxygen supply is needed.
>
> To address this potential unsafe condition, EASA issued AD 2011–0167 [(*http://ad.easa.europa.eu/blob/easa_ad_2011_0167_superseded.pdf/AD_2011_0167_1*)] to require the identification [of the part number and serial number] and modification of the affected [non-serviceable] oxygen container assemblies. That AD also prohibited the installation of the affected containers on any aeroplane as replacement parts.
>
> Since that [EASA] AD was issued, it was established that the Models A318–121 and A318–122 were missing from the Applicability of the AD, and clarification was necessary regarding the affected containers, which are only those marked B/E Aerospace Systems on the equipment data plate.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0167, which is superseded, expands the Applicability by adding two aeroplane models, and provides clarity by providing a list of affected passenger oxygen containers.

Required actions also include replacing the oxygen generator manifold of the affected oxygen container with a serviceable manifold, doing an operational check of the manual mask release, and repairing the passenger oxygen container if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2012-0807-0006.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM (79 FR 7603, February 10, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any

actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the SNPRM (79 FR 7603, February 10, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was 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 proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the SNPRM.

No comments were provided to the SNPRM (79 FR 7603, February 10, 2014) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate. We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the SNPRM (79 FR 7603, February 10, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (79 FR 7603, February 10, 2014).

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

Costs of Compliance

We estimate that this AD affects 22 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement (The average number of oxygen containers per airplane is 50.).	3 work-hours × $85 per hour = $255	$0	$255	$5,610
Operational check	3 work-hours × $85 per hour = $255	0	255	5,610

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair (from operational check)	1 work-hour × $85 per hour = $85	$0	$85
Repair (from part number check of the passenger oxygen container).	1 work-hour × $85 per hour = $85	0	85

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2012-0807;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–13–12 Airbus: Amendment 39–17888. Docket No. FAA–2012–0807; Directorate Identifier 2011–NM–191–AD.

(a) Effective Date

This AD becomes effective September 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–111, –211, –212, –214, –231, –232, and –233 airplanes; A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers (MSN).

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports of silicon particles inside the oxygen generator manifolds, which had chafed from the mask hoses during installation onto the generator outlets. We are issuing this AD to detect and correct non-serviceable oxygen generator manifolds, which could reduce or block the oxygen supply, and result in injury to passengers when oxygen supply is needed.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Part Number and Serial Number Identification

Within 5,000 flight cycles, or 7,500 flight hours, or 24 months, whichever occurs first after the effective date of this AD, identify the part number and serial number of each passenger oxygen container. A review of airplane maintenance records is acceptable in lieu of this identification if the part number and serial number of the oxygen container can be conclusively determined from that review.

(h) Replacement, Check, Repair

If the part number of the passenger oxygen container is listed in paragraph (h)(1) of this AD and the serial number of the passenger oxygen container is listed in paragraph (h)(2) of this AD: Within the compliance time specified in paragraph (g) of this AD, do the actions specified in paragraphs (h)(3), (h)(4), and (h)(5) of this AD, except as provided by paragraphs (i)(1) through (i)(7) of this AD.

(1) (Type I: 15 and 22 minutes) 12C15Lxxxxx0100, 12C15Rxxxxx0100, 13C15Lxxxxx0100, 13C15Rxxxxx0100, 14C15Lxxxxx0100, 14C15Rxxxxx0100, 12C22Lxxxxx0100, 12C22Rxxxxx0100, 13C22Lxxxxx0100, 13C22Rxxxxx0100, 14C22Lxxxxx0100, and 14C22Rxxxxx0100; and (Type II: 15 and 22 minutes) 22C15Lxxxxx0100, 22C15Rxxxxx0100, 22C22Lxxxxx0100, and 22C22Rxxxxx0100.

Note 1 to paragraph (h)(1) of this AD: The passenger emergency oxygen container assemblies listed in paragraph (h)(1) of this AD are products having the mark ''B/E AEROSPACE'' on the identification plate.

(2) ARBA–0000 to ARBA–9999 inclusive, ARBB–0000 to ARBB–9999 inclusive, ARBC–0000 to ARBC–9999 inclusive, ARBD–0000 to ARBD–9999 inclusive, ARBE–0000 to ARBE–9999 inclusive, BEBF–0000 to BEBF–9999 inclusive, BEBH–0000 to BEBH–9999 inclusive, BEBK–0000 to BEBK–9999 inclusive, BEBL–0000 to BEBL–9999 inclusive, and BEBM–0000 to BEBM–9999 inclusive.

(3) Replace the oxygen generator manifold of any affected oxygen passenger container with a serviceable manifold, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–35A1047, dated March 29, 2011.

(4) Do an operational check of the manual mask release, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–35A1047, dated March 29, 2011. If the operational check fails, before further flight, repair the manual mask release, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Check if the part number of the passenger oxygen container is listed in B/E Aerospace Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012; or B/E Aerospace Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011, as applicable. If the part number is listed in B/E Aerospace Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012; or B/E Aerospace Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011: Within the compliance time specified in paragraph (g) of this AD, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Exceptions

(1) Oxygen containers that meet the conditions specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD are compliant with the requirements of paragraph (h) of this AD.

(i) Oxygen containers Type I having a part number listed in paragraph (h)(1) of this AD and having a serial number listed in paragraph (h)(2) of this AD, that have been modified prior to the effective date of this AD, as specified in the Accomplishment Instructions of B/E Aerospace Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012.

(ii) Oxygen containers Type II having a part number listed in paragraph (h)(1) of this AD and having a serial number listed in paragraph (h)(2) of this AD, that have been modified prior to the effective date of this AD, as specified in the Accomplishment Instructions of B/E Aerospace Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011.

(2) Airplanes on which Airbus Modification 150703 or Airbus Modification 150704 has not been embodied in production do not have to comply with the requirements of paragraph (h) of this AD, unless an oxygen container having a part number listed in paragraph (h)(1) of this AD and having a serial number listed in paragraph (h)(2) of this AD has been replaced since the airplane's first flight.

(3) Airplanes on which Airbus Modification 150703 or Airbus Modification 150704 has been embodied in production and which are not listed by model and MSN in Airbus Service Bulletin A320–35A1047, dated March 29, 2011, are not subject to the requirements of paragraphs (g) and (h) of this AD, unless an oxygen container having a part number listed in paragraph (h)(1) of this AD and having a serial number listed in paragraph (h)(2) of this AD has been replaced since the airplane's first flight.

(4) Model A319 airplanes that are equipped with a gaseous oxygen system for passengers, installed in production with Airbus Modification 33125, do not have the affected passenger oxygen containers installed. Unless these airplanes have been modified in-service (no approved Airbus modification exists), the requirements of paragraphs (g) and (h) of this AD do not apply to these airplanes.

(5) Airplanes that have already been inspected prior to the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–35A1047, dated March 29, 2011, must be inspected and, depending on the findings, corrected, within the compliance time defined in paragraph (g) of this AD, as required by paragraph (h) of this AD, as applicable, except as specified in paragraph (i)(6) of this AD.

(6) Airplanes on which the passenger oxygen container has been replaced before the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–35A1047, dated March 29, 2011, are compliant with the requirements of the paragraph (h) of this AD for that passenger oxygen container.

(7) The requirements of paragraphs (g) and (h) of this AD apply only to passenger oxygen containers that are Design A, as defined in figure 1 to paragraph (i)(7) of this AD.

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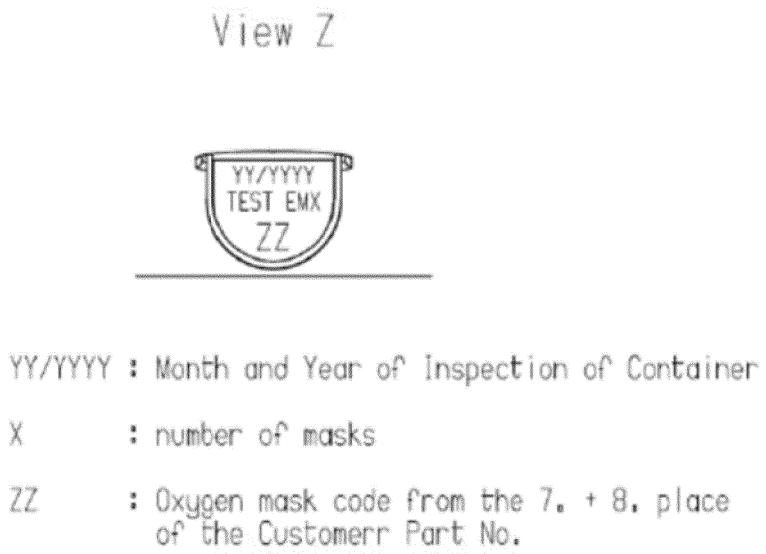
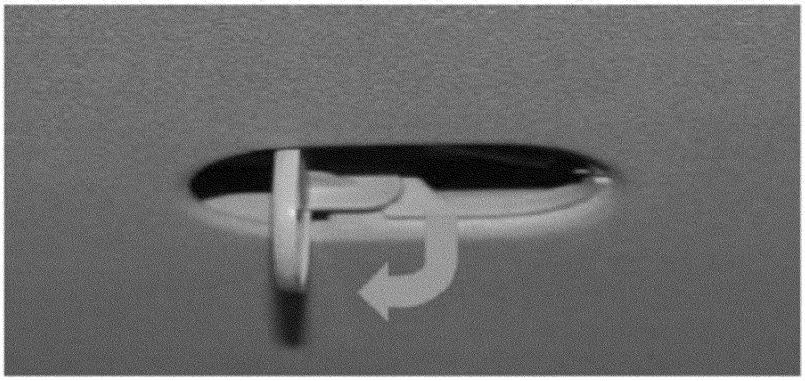
Figure 1 to paragraph (i)(7) of this AD – Design A of the Passenger Oxygen Containers Affected by this AD

Design A: The placard on the passenger oxygen container test button is as described in Picture A of Appendix 1 of this AD. The Mask configuration ("ZZ" in Picture A) is a number and the test button is as shown in Picture B.

Picture A:



Picture B:



BILLING CODE 4910–13–C

Note 1 to figure 1 to paragraph (i)(7) of this AD: Figure 1 is a reproduction of material from EASA Airworthiness Directive 2012–0083, dated May 16, 2012. The words ''Appendix 1 of this AD'' in this figure refer to Appendix 1 of the EASA AD.

(j) Parts Installation Limitations

As of the effective date of this AD, no person may install an oxygen container having a part number specified in paragraph (h)(1) of this AD and having a serial number specified in paragraph (h)(2) of this AD, on any airplane, unless the container has been modified in accordance with the Accomplishment Instructions of any of the service information specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable.

(1) Airbus Service Bulletin A320–35A1047, dated March 29, 2011.

(2) B/E AEROSPACE Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012.

(3) B/E AEROSPACE Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) B/E AEROSPACE Service Bulletin 1XCXX–0100–35–005, dated March 14, 2011, which is not incorporated by reference in this AD.

(2) B/E AEROSPACE Service Bulletin 22CXX–0100–35–003, dated March 17, 2011, which is not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; 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) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0083, dated May 16, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!document Detail;D=FAA-2012-0807-0006.*

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

(n) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–35A1047, dated March 29, 2011.

(ii) B/E AEROSPACE Service Bulletin 1XCXX–0100–35–005, Revision 1, dated December 15, 2012.

(iii) B/E AEROSPACE Service Bulletin 22CXX–0100–35–003, Revision 1, dated December 20, 2011.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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.*

(4) 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.

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

Issued in Renton, Washington, on July 9, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–16706 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0514; Directorate Identifier 2014–SW–027–AD; Amendment 39–17925; AD 2014–16–01]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI), Model MD900 helicopters. This AD requires an eddy current inspection of the main rotor upper hub assembly (upper hub) for a crack and replacing the upper hub with an airworthy upper hub before further flight if there is a crack. This AD is prompted by a report of cracks on an upper hub at the blade attach holes. The actions specified by this AD are intended to detect a crack in the upper hub to prevent failure of the upper hub and subsequent loss of control of the helicopter.

DATES: This AD becomes effective August 20, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 20, 2014.

We must receive comments on this AD by October 6, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aviation Safety Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5348; email *eric.schrieber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We are adopting a new AD for MDHI Model MD900 helicopters. This AD requires cleaning the upper hub and performing an eddy current inspection of the upper hub for a crack. If there is a crack, this AD requires replacing the upper hub with an airworthy upper hub before further flight. This AD is prompted by a report that four cracks were found at the blade attach holes on a high-time upper hub. This is the first time a crack has been reported in an upper hub at this location in the MD900 fleet. We are issuing this AD to detect a crack on the upper hub, which if not corrected could result in failure of the upper hub and subsequent loss of control of the helicopter.

FAA's Determination

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

Related Service Information

MDHI has issued Service Bulletin SB900–122, dated April 8, 2014. The service bulletin specifies a one-time visual inspection of the upper hub for a crack and damage. If there is damage, the service bulletin specifies replacing the upper hub with an airworthy upper hub. If there are no visible cracks or damage, the service bulletin specifies performing a one-time eddy current inspection. If there is a crack, the service bulletin specifies removing the upper hub, tagging it as unairworthy and returning it to MDHI, and replacing it with an airworthy upper hub.

AD Requirements

This AD requires, within the next 25 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, cleaning the upper hub inspection areas and eddy current inspecting the upper hub for a crack. The eddy current inspection must be done by a level II or higher technician with the National Aerospace Standard 410 or equivalent certification who has performed an eddy current inspection in the last 12 months. If there is a crack, before further flight, this AD requires replacing the upper hub with an airworthy upper hub.

Differences Between This AD and the Service Information

This AD does not require you to contact the manufacturer, return a cracked upper hub to the manufacturer, or do a visual inspection of the upper hub, as does the service information.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD will affect 23 helicopters of U.S. Registry. We estimate $85 for labor costs. We estimate 1 work hour to do an eddy current inspection for a cost of $85 per helicopter and a total fleet cost of $1,955. We estimate 11 work hours to replace an upper hub with a required parts cost of $15,998 for a total cost of $16,933 per helicopter.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment before adopting this rule because the required corrective actions must be done within 25 hours TIS, which will be accumulated in about one month based on the average flight-hour utilization rate of these helicopters that are mostly used for emergency medical service.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice an opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

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

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–16–01 MD Helicopters, Inc.: Amendment 39–17925; Docket No. FAA–2014–0514; Directorate Identifier 2014–SW–027–AD.

(a) Applicability

This AD applies to Model MD900 helicopters, serial numbers 900–00008 through 900–00140, with main rotor upper hub assembly (upper hub) part number 900R2101006–105, –107, –109, or –111 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a cracked upper hub. This condition could result in failure of the upper hub and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 20, 2014.

(d) Compliance

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

(e) Required Actions

Within the next 25 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first:

(1) Clean each upper hub inspection area as shown in Figure 1 of MD Helicopters Service Bulletin SB900–122, dated April 8, 2014 (SB900–122).

(2) Eddy current inspect the upper hub for a crack by following the Accomplishment Instructions, paragraphs 2.A.(3) through 2.A.(11) of SB900–122. This eddy current inspection must be performed by a Level II or higher technician with the National Aerospace Standard 410 or equivalent certification who has performed an eddy current inspection within the last 12 months. If there is a crack, before further flight, replace the upper hub with an airworthy upper hub.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Eric Schrieber, Aviation Safety Engineer, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5348; email *eric.schrieber@faa.gov.*

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6220 Main Rotor Head.

(h) Material Incorporated by Reference

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

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

(i) MD Helicopters Service Bulletin SB900–122, dated April 8, 2014.

(ii) Reserved.

(3) For MD Helicopters, Inc. service information identified in this AD, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com.*

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

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

Issued in Fort Worth, Texas, on July 24, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–18163 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0790; Directorate Identifier 2013–NM–061–AD; Amendment 39–17916; AD 2014–15–14]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 89–12–10, for certain The Boeing Company Model 747 airplanes. AD 89–12–10 required replacement of certain underwing fuel tank access doors with stronger, fire-resistant doors. This new AD requires inspecting certain fuel tank access doors for installation of impact-resistant doors, and stencils and index markers; corrective actions if necessary; revising the maintenance program to incorporate certain new airworthiness limitations; and adding airplanes to the applicability. This AD was prompted by a report of a standard access door installed instead of an impact-resistant access door and stencils missing from some impact-resistant access doors and adjacent wing skin. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

DATES: This AD is effective September 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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–2013–0790; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax:

425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 89–12–10, Amendment 39–6230 (Docket No. 88–NM–57–AD; 54 FR 23643, June 2, 1989). AD 89–12–10 applied to certain The Boeing Company Model 747 100, 747–200, 747–300, and 747SP series airplanes. The NPRM published in the **Federal Register** on September 25, 2013 (78 FR 58962). The NPRM was prompted by reports indicating that a standard access door was located where an impact-resistant access door was required, and stencils were missing from some impact-resistant access doors and adjacent wing skin. The NPRM proposed to require an inspection of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations, and replacement of any standard door with an impact-resistant access door if necessary. The NPRM also proposed to require an inspection for the presence of stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. The NPRM also proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section. The NPRM also proposed to add airplanes to the applicability. We are issuing this AD to prevent foreign object penetration of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 58962, September 25, 2013) and the FAA's response to each comment.

Request To Revise Maintenance Planning Data (MPD) Document Number

United Airlines requested that we revise the MPD document number specified in paragraph (h)(1) of the NPRM (78 FR 58962, September 25, 2013) to reference Boeing 747–400 MPD Document D621U400–9, Revision August 2012. United Airlines pointed out that the airworthiness section of the document is located in Section 9 of the document identified as D621U400–9.

We agree with the commenter for the reason provided. We have revised paragraph (h)(1) of this final rule accordingly.

Request To Reference Aircraft Maintenance Manual (AMM)

British Airways (BA) stated the AMM would be a better location for an appropriate task than the maintenance program. BA stated that Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Doors,'' of Sub-section B.2, ''Impact-Resistant Fuel Tank Access Doors,'' of Section B, ''Airworthiness Limitations (AWLs)—Fuel Systems,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the D621U400–9 Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9, Revision August 2012, does not have a fixed interval or a defined inspection type, but simply requires that the access panels are verified to be impact resistant prior to installation. BA stated that this cannot be described as scheduled maintenance and does not consider the best place for this Critical Design Configuration Control Limitation (CDCCL) to be an operator's maintenance program. BA stated that many CDCCL items are satisfied through the AMM rather than with a maintenance program task. BA gave an example of CDCCL Task 28–AWL–16, ''Fuel Tank Access Doors Configuration'' of Sub-section B.1, ''AWLs—Fuel System Ignition Prevention,'' of Section B, ''Airworthiness Limitations (AWLs)—Fuel Systems,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the D621U400–9 Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9, Revision August 2012, which also relates to fuel tank access door installation and has no fixed interval; however, this CDCCL requirement is satisfied through the AMM procedure relating to these panels, and not through a task in an operator's maintenance program.

We infer that the commenter is requesting that Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Doors,'' of Sub-section B.2, ''Impact-Resistant Fuel Tank Access Doors,'' of Section B, ''Airworthiness Limitations (AWLs)—Fuel Systems,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the D621U400–9 Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9, Revision August 2012, contain a reference to the AMM similar to CDCCL Task 28–AWL–16, ''Fuel Tank Access Doors Configuration'' of Sub-section B.1, ''AWLs—Fuel System Ignition Prevention,'' of Section B, ''Airworthiness Limitations (AWLs)—Fuel Systems,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the D621U400–9 Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9, Revision August 2012.

We disagree with the request to add an AMM reference. The requirement specified in Task 57–AWL–01 identifies the safety critical item to be maintained and does not mandate a specific AMM. The inclusion of a reference to an AMM is not necessary. However, operators may refer to the AMMs that are referenced in CDCCL Task 28–AWL–16. We have not changed this AD in this regard.

Clarification of Inspection Area

Paragraph (g)(2) of the NPRM (78 FR 58962, September 25, 2013) proposed to require an inspection for the presence of stencils and index markers on impact-resistant access doors, and application of new stencils or index markers if necessary. As specified in Boeing Service Bulletin 747–28–2315, dated January 11, 2012, the stencils and index markers are located on the doors and adjacent wing skin. Therefore, we have revised paragraph (g)(2) of this AD to specify doing an inspection for the presence of stencils and index markers on impact-resistant access doors and adjacent wing skin. We have also clarified in the **SUMMARY** section and Discussion paragraph of the **SUPPLEMENTARY INFORMATION** section that the AD was prompted by a report of a standard access door installed instead of an impact-resistant access door and stencils missing from some impact-resistant access doors and adjacent wing skin.

Clarification of Maintenance Program Revision

Paragraph (h) of the NPRM (78 FR 58962, September 25, 2013) specifies that the actions specified in paragraphs (h)(1) and (h)(2) of the NPRM must be done; however, the affected airplane models were not identified. We have revised paragraph (h)(1) of this AD to specify that the actions are applicable for Model 747–400, 747–400D, 747–400F series airplanes. We have also revised paragraph (h)(2) of this AD to specify that the actions are applicable for Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 58962, September 25, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 58962, September 25, 2013).

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

Costs of Compliance

We estimate that this AD affects 189 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 13 work-hours × $85 per hour = $1,105	$0	Up to $1,105	Up to $208,845.
Maintenance program revision	1 work-hour × $85 per hour = $85	$0	$85	$16,065.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement (per door)	3 work-hours × $85 per hour = $255	$8,000	$8,255
Stencil and index marker (14 doors)	17 work-hours × $85 per hour = $1,445	$0	1,445

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

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 89–12–10, Amendment 39–6230 (Docket No. 88–NM–57–AD; 54 FR 23643, June 2, 1989), and adding the following new AD:

2014–15–14 The Boeing Company: Amendment 39–17916; Docket No. FAA–2013–0790; Directorate Identifier 2013–NM–061–AD.

(a) Effective Date

This AD is effective September 9, 2014.

(b) Affected ADs

This AD replaces AD 89–12–10, Amendment 39–6230 (Docket No. 88–NM–57–AD; 54 FR 23643, June 2, 1989).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; as identified in Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by report of a standard access door installed instead of an impact-resistant access door and stencils missing from some impact-resistant access doors and adjacent wing skin. We are issuing this AD to prevent foreign object penetration

of the fuel tank, which could cause a fuel leak near an ignition source (e.g., hot brakes or engine exhaust nozzle), consequently leading to a fuel-fed fire.

(f) Compliance

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

(g) Inspection and Corrective Action

Within 72 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(1) Do either a general visual inspection or ultrasonic non-destructive test of the left- and right-hand wing fuel tank access doors to determine whether impact-resistant access doors are installed in the correct locations. If any standard access door is found, before further flight, replace with an impact-resistant access door, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(2) Do a general visual inspection of the left- and right-hand wing fuel tank impact-resistant access doors and adjacent wing skin to verify stencils and index markers are applied. If a stencil or index marker is missing, before further flight, apply a stencil or index marker, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(h) Maintenance Program Revisions

Within 60 days after the effective date of this AD, do the actions specified in paragraphs (h)(1) or (h)(2) of this AD, as applicable.

(1) For Model 747–400, –400D, and –400F series airplanes: Revise the maintenance program to incorporate Critical Design Configuration Control Limitation (CDCCL) Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Doors,'' of Sub-section B.2, ''Impact-Resistant Fuel Tank Access Doors,'' of Section B, ''Airworthiness Limitations (AWLs)—Fuel Systems,'' of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) D621U400–9, of the Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9, Revision August 2012.

(2) For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes: Revise the maintenance program to incorporate CDCCL Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Doors,'' of Sub-section C.2, ''Impact-Resistant Fuel Tank Access Doors,'' of Section C, ''Airworthiness Limitations—Fuel Systems,'' of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) Document D6–13747–CMR, Revision August 2012.

(i) No Alternative Actions, Intervals, and/or CDCCL

After accomplishing the revisions required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

For more information about this AD, contact Suzanne Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 747–28–2315, dated January 11, 2012.

(ii) CDCCL Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Doors,'' of Sub-section B, Airworthiness Limitations (AWLs)—Fuel Systems, of Section 9, D621U400–9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) of Boeing 747–400 Maintenance Planning Data (MPD) Document, Revision August 2012.

(iii) CDCCL Task 57–AWL–01, ''Impact-Resistant Fuel Tank Access Doors,'' of Sub-section C.2., ''Impact Resistant Fuel Tank Access Doors,'' of Section C, ''Airworthiness Limitations—Fuel Systems,'' of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs) Document D6–13747–CMR, Revision August 2012.

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

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

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

Issued in Renton, Washington, on July 13, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17922 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0311; Directorate Identifier 2014–CE–014–AD; Amendment 39–17927; AD 2014–16–03]

RIN 2120–AA64

Airworthiness Directives; Fuji Heavy Industries, Ltd. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Fuji Heavy Industries, Ltd. Models FA–200–160, FA–200–180, and FA–200–180AO airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as deterioration of brake performance due to seal defects caused by deterioration due to age of the O-rings of the brake master cylinder. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 9, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 9, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0311; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this proposed AD, contact Fuji Heavy Industries, Ltd., Aerospace Company, 1–11 Younan 1 Chome Utsunomiya Tochigi, Japan 320–8564; telephone: +81–28–684–7253; fax: +81–28–684–7260; email: none; Internet: *http://www.fhi.co.jp/english/outline/section/aero.html*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to Fuji Heavy Industries, Ltd. Models FA–200–160, FA–200–180, and FA–200–180AO airplanes. The NPRM was published in the **Federal Register** on May 19, 2014 (79 FR 28647). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI was issued based on reports of deterioration of brake performance due to seal defects caused by deterioration due to age of the O-rings of the brake master cylinder on the affected airplanes, which could result in reduced or loss of control during ground operations. The MCAI requires repetitive replacement of any O-ring of the brake master cylinders. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0311-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 28647, May 19, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 28647, May 19, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 28647, May 19, 2014).

Costs of Compliance

We estimate that this AD will affect 3 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $255, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $10, for a cost of $690 per product. We have no way of determining the number of products that may need these actions.

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

For the reasons discussed above, I certify this AD:

(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.

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–2014–0311; 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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2014–16–03 Fuji Heavy Industries, Ltd.: Amendment 39–17927; Docket No. FAA–2014–0311; Directorate Identifier 2014–CE–014–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fuji Heavy Industries, Ltd. Models FA–200–160, FA–200–180, and FA–200–180AO airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as deterioration of brake performance due to seal defects caused by deterioration due to age of the O-rings of the brake master cylinders. We are issuing this AD to prevent the deterioration of brake performance, which could result in reduced or loss of control during ground operations.

(f) Actions and Compliance

Unless already done, do the following actions required by paragraphs (f)(1) through (f)(3) of this AD:

(1) As of September 9, 2014 (the effective date of this AD), if the brake master cylinder O-rings have accumulated more than 1,000 hours time-in-service (TIS) or 5 years since the last replacement of any O-ring or if the replacement date of any O-ring cannot be determined, within 50 hours TIS after September 9, 2014 (the effective date of this AD) or 1 year after September 9, 2014 (the effective date of this AD), whichever occurs first, replace any O-ring following Fuji Heavy Industries Ltd. Service Bulletin No. 200–016, dated April 17, 2014.

(2) As of September 9, 2014 (the effective date of this AD), every time the brake master cylinder is replaced, inspect the manufacture date on the data tag of the brake master cylinder or the last replacement date of any O-ring by referring to the airframe logbook.

(3) During any inspection of the manufacture date of the brake master cylinder or the last replacement date of any O-ring as required by paragraph (f)(2) of this AD, if it is determined that the O-rings have accumulated more than 5 years since the manufacture date on the data tag of the brake master cylinder or the last replacement date of the brake master cylinder O-rings, or if the manufacture date on the data tag on the brake master cylinder and the last replacement date of any brake master cylinder O-ring cannot be determined, before further flight, replace all brake master cylinder O-rings when installed on the airplane following Fuji Heavy Industries Ltd. Service Bulletin No. 200–016, dated April 17, 2014.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Japan Civil Aviation Bureau (JCAB) AD No. TCD–8396–2014, dated April 21, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0311-0002*.

(i) Material Incorporated by Reference

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

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

(i) Fuji Heavy Industries Ltd. Service Bulletin No. 200–016, dated April 17, 2014.

(ii) Reserved.

(3) For Fuji Heavy Industries, Ltd. service information identified in this AD, contact Fuji Heavy Industries, Ltd., Aerospace Company, 1–11 Younan 1 Chome Utsunomiya Tochigi, Japan 320–8564; telephone: +81–28–684–7253; fax: +81–28–684–7260; email: none; Internet: *http://www.fhi.co.jp/english/outline/section/aero.html*.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on July 28, 2014.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18260 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0478; Directorate Identifier 2014–SW–017–AD; Amendment 39–17902; AD 2014–07–51]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for certain AgustaWestland S.p.A. Model AB139 and AW139 helicopters. This AD requires repetitively inspecting the Main Rotor (M/R) Rotating Scissors for play of the Lower Half Scissor Spherical Bearing (bearing) and removing the bearing if there is play beyond allowable limits. This AD also requires removing all affected bearings. This AD is prompted by reports of certain bearings dislodging from certain M/R Rotating Scissors. These actions are intended to detect excessive play of the bearing and prevent failure of the M/R Rotating Scissors and subsequent loss of control of the helicopter.

DATES: This AD becomes effective August 20, 2014 to all persons except those persons to whom it was made immediately effective by Emergency AD (EAD) No. 2014–07–51, issued on March 27, 2014, which contains the requirements of this AD.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of August 20, 2014.

We must receive comments on this AD by October 6, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On March 27, 2014, we issued EAD No. 2014–07–51, which requires repetitively inspecting the M/R Rotating Scissors for play of the bearing every 5 hours time-in-service (TIS) and, if there is play beyond allowable limits, removing the affected bearing and re-identifying the M/R Rotating Scissors. The EAD also requires removing all affected bearings within 50 hours TIS. The EAD was prompted by reports of certain bearings dislodging from certain M/R Rotating Scissors. The EAD was sent previously to all known U.S. owners and operators of these helicopters.

EAD No. 2014–07–51 was prompted by EAD No. 2014–0073–E, dated March 20, 2014, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for AgustaWestland S.p.A. Model AB139 and AW139 helicopters. EASA advises of reports of the dislodging of bearings, part number (P/N) 3G6230V00654, that were installed on M/R Rotating Scissors, P/N 3G6230A00733. EASA also states that as a result of the investigations accomplished by the supplier of the bearings, it was determined that a quality issue might have affected the production of the bearings. EASA advises that the condition, if not detected and corrected, could lead to loss of control of the helicopter. The EASA EAD requires repetitive inspections of certain M/R Rotating Scissors, P/N 3G6230A00733, that have been manufactured or repaired with the installation of certain potentially defective bearings, P/N 3G6230V00654. The EASA EAD also requires replacement of the affected bearings, or as an alternative, replacement of the M/R Rotating Scissors with an affected bearing, which constitutes terminating action for the repetitive inspections required by the EAD.

This final rule makes the requirements of EAD No. 2014–07–51, issued March 27, 2014, effective to all parties except those to whom they were made immediately effective through EAD 2014–07–51. This AD contains the requirements of EAD 2014–07–51 with minor editorial changes to revise the references to ''the Applicability section of this EAD'' in paragraphs (e)(3), (e)(4), and (e)(5) of this AD to ''paragraph (a) of this AD.'' These minor editorial change are consistent with the requirements of the EAD and do not increase the economic burden on any operator.

FAA's Determination

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

Related Service Information

AgustaWestland issued Bollettino Tecnico No. 139–368, dated March 19, 2014 (BT), for Model AB139 and AW139 helicopters with certain serial numbered (S/Ned) M/R Rotating Scissors, P/N 3G6230A00733; or M/R Rotating Scissors, P/N 3G6230A00733, which have been repaired with the installation of certain S/Ned bearings, P/N 3G6230V00654. The BT also applies to affected parts kept in stock. The BT was issued to identify and replace potentially defective bearings caused by a supplier quality issue. The BT also establishes an interim inspection schedule to reduce impact on operations.

We also reviewed AgustaWestland AW139 Document Code 39–C–62–31–00–00A–286C–A, issue 001, dated August 6, 2012, for Model AB139 and AW139 helicopters to specify the detailed inspection of the fixed swashplate and rotating scissors.

AD Requirements

This AD requires, within 5 hours TIS and thereafter at intervals not to exceed 5 hours TIS, inspecting the M/R Rotating Scissors for play of the bearing. If there is play, this AD requires, before further flight, a more detailed inspection of the M/R Rotating Scissors. If the detailed inspection results determine the play is beyond allowable limits, this AD requires, before further flight, removing the bearing and re-identifying the M/R Rotating Scissors. This AD also requires, within 50 hours TIS, removing any affected bearing.

Costs of Compliance

We estimate that this AD will affect 102 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. Inspecting the M/R Rotating Scissors for play of the bearing requires a minimal amount of time, for a nominal cost per inspection. Performing the detailed inspection of the M/R Rotating Scissors requires about

1 work-hour, for a cost of $85 per inspection. Removing a bearing requires about 2 work-hours, for a labor cost of $170 per bearing. Parts for replacing one bearing cost $808, for a total replacement cost of $978 per bearing, or $99,756 for the U.S. fleet.

According to AgustaWestland's service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by AgustaWestland. Accordingly, we have included all costs in our cost estimate.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found and continue to find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can adversely affect the controllability of the helicopter and the required corrective actions must be accomplished within 5 hours TIS and 50 hours TIS, a short time period based on the average flight-hour utilization rate of these helicopters.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to public interest and good cause existed to make the AD effective immediately by EAD No. 2014–07–51, issued on March 27, 2014, to all known U.S. owners and operators of these helicopters. These conditions still exist and the AD is hereby published, with a minor editorial change, in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

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

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–07–51 AgustaWestland S.p.A. (Agusta): Amendment 39–17902; Docket No. FAA–2014–0478; Directorate Identifier 2014–SW–017–AD.

(a) Applicability

This AD applies to the following Agusta Model AB139 and AW139 helicopters, certificated in any category:

(1) For helicopters with Main Rotor (M/R) Rotating Scissors, part number (P/N) 3G6230A00733, with serial numbers (S/Ns) listed in Table 1 of AgustaWestland Bollettino Tecnico No. 139–368, dated March 19, 2014 (BT 139–368), on which the Lower Half Scissors Spherical Bearing (bearing), P/N 3G6230V00654, was not replaced; and

(2) For helicopters with M/R Rotating Scissors, P/N 3G6230A00733, on which the bearing, P/N 3G6230V00654, was replaced with a bearing with a S/N listed in Table 2 of BT 139–368.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive play of the bearing in the M/R Rotating Scissors. This condition could result in failure of the M/R Rotating Scissors and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 20, 2014 to all persons except those persons to whom it was made immediately effective by Emergency AD (EAD) No. 2014–07–51, issued on March 27, 2014, which contains the requirements of this AD.

(d) Compliance

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

(e) Required Actions

(1) Within 5 hours time-in-service (TIS) and thereafter at intervals not to exceed 5 hours TIS, inspect the M/R Rotating Scissors for play of the bearing in accordance with paragraph 4. of Part I, Compliance Instructions, of BT 139–368.

(2) If there is play, before further flight, accomplish a detailed inspection of the M/R Rotating Scissors in accordance with steps 9.1 through 12.9 of AgustaWestland AW139 Document Code 39–C–62–31–00–00A–286C–A, Rotating control installation—Fixed swashplate and rotating scissors—Detailed inspection, issue 001, dated August 6, 2012. If there is play beyond allowable limits, before further flight, remove the bearing.

(3) Within 50 hours TIS, remove any bearing listed in paragraph (a) of this AD.

(4) Prior to installing a M/R Rotating Scissors with a S/N listed in paragraph (a) of this AD, replace the bearing and re-identify the M/R Rotating Scissors in accordance with paragraphs 4.2. through 4.4. of Part II, Compliance Instructions, of BT 139–368.

(5) Do not install a bearing listed in paragraph (a) of this AD into any M/R Rotating Scissors.

(f) Alternative Methods of Compliance (AMOCs)

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

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or

certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) EAD No. 2014–0073–E, dated March 20, 2014. You may view the EASA EAD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0478.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6200, M/R System.

(i) Material Incorporated by Reference

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

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

(i) AgustaWestland Bollettino Tecnico No. 139–368, dated March 19, 2014.

(ii) AgustaWestland AW139 Document Code 39–C–62–31–00–00A–286C–A, Rotating control installation—Fixed swashplate and rotating scissors—Detailed inspection, issue 001, dated August 6, 2012.

(3) For AgustaWestland service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39 0331–664680; or at *http://www.agustawestland.com/technical-bulletins.*

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

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

Issued in Fort Worth, Texas, on July 11, 2014.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–18298 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0513; Directorate Identifier 2014–CE–020–AD; Amendment 39–17920; AD 2014–15–18]

RIN 2120–AA64

Airworthiness Directives; Mooney International Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Mooney International Corporation Models M20C, M20E, M20M, M20R, and M20TN airplanes. This AD requires inspection of the outer empennage attach fittings for correct thickness with replacement as necessary. This AD was prompted by discovery of empennage attach fittings (Lugs) that do not meet the approved design dimensional requirements, which could result in possible reduction in fatigue or static strength and/or corrosion. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective August 20, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 20, 2014.

We must receive comments on this AD by September 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Mooney International Corporation, 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com;* Internet: *www.mooney.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0513; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The 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: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received reports of outboard empennage attach fittings that can be found on certain Mooney International Corporation Models M20C, M20E, M20M, M20R and M20TN airplanes that do not meet the approved type design dimensional requirements. This condition, if not corrected, could result in reduction of fatigue or static strength, and/or corrosion, which could lead to possible structural failure of the attachment of the empennage to the fuselage causing loss of control. We are issuing this AD to correct the unsafe condition on these products.

Relevant Service Information

We reviewed Mooney International Corporation Service Bulletin M20–318, dated June 2, 2014. The service information describes procedures for inspection of the outboard empennage attach fittings and instructions for replacement if necessary.

FAA's Determination

We are issuing 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.

AD Requirements

This AD requires removal of the empennage assembly for inspection of the outboard empennage attach fittings. If the fittings are found not to meet dimensional requirements, replacement of the affected empennage attach fittings is required. This AD also requires sending the inspection results to Mooney International Corporation.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the attach fittings could result in separation of the empennage and loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0513 and Directorate Identifier 2014–CE–020–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Costs of Compliance

We estimate that this AD affects 38 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of empennage attach fittings	6 work-hours × $85 per hour = $510	$79	$589	$22,382

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of one empennage attach fitting when only one is found to be out of tolerance.	12 work-hours × $85 per hour = $1,020	$95	$1,115
Replacement of both empennage attach fittings	24 work-hours × $85 per hour = $2,040	190	2,230

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(4) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–18 Mooney International Corporation: Amendment 39–17920; Docket No. FAA–2014–0513; Directorate Identifier 2014–CE–020–AD.

(a) Effective Date

This AD is effective August 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Mooney International Corporation airplanes, certificated in any category:

	Models	Serial Nos.
(1)	M20C ...	2313.
(2)	M20E ...	761.
(3)	M20M ...	27–0057.
(4)	M20R ...	29–0141 and 29–0513 through 29–0519.
(5)	M20TN	31–0101 through 31–0127.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5342, Fuselage, Stabilizer Attach Fittings.

(e) Unsafe Condition

This AD was prompted by discovery of empennage attach fittings (Lugs) that do not meet the approved design dimensional requirements, which could result in possible reduction in fatigue or static strength, and/or corrosion. This unsafe condition could lead to possible structural failure of the attachment of the empennage to the fuselage causing loss of control. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified in paragraphs (g) through (i) of this AD, unless already done.

(g) Inspection

(1) Within the next 10 hours time-in-service after the effective date of this AD, inspect the part number (P/N) 350061–007 left hand (LH) and 350061–008 right hand (RH) outer empennage attach fittings for correct thickness following Step 1 of Mooney International Corporation Service Bulletin No. M20–318, dated June 2, 2014.

(2) If the empennage attach fittings meet the dimensional requirements specified in Step 1 of Mooney International Corporation Service Bulletin No. M20–318, dated June 2, 2014, no further action is required except for the reporting requirement in paragraph (h) of this AD.

(3) If any of the RH or LH empennage attach fittings do not meet the dimensional requirements specified in Step 1 of Mooney International Corporation Service Bulletin No. M20–318, dated June 2, 2014, before further flight, replace the empennage attach fittings having the incorrect thickness with new airworthy empennage attach fittings following Step 2 of Mooney International Corporation Service Bulletin No. M20–318, dated June 2, 2014.

(h) Reporting Requirement

Within 10 days after the inspection required in paragraph (g)(1) or the action required in paragraph (g)(3) of this AD if replacing an empennage attach fitting is required, whichever is applicable, or within 10 days after the effective date of this AD, whichever occurs later; send the inspection results to: Mooney International Corporation, Attn: Technical Support, 165 Al Mooney Road North, Kerrville, Texas 78028; fax: (830) 257–4635; telephone: (830) 896–6000; email: *technicalsupport@mooney.com*; Internet: *www.mooney.com*. Use the form on page 7 of Mooney International Corporation Service Bulletin No. M20–318, dated June 2, 2014, to comply with this AD action.

(i) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD.

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

(k) Related Information

Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Mooney International Corporation Service Bulletin No. M20–318, dated June 2, 2014.

(ii) Reserved.

(3) For Mooney International Corporation service information identified in this AD, contact Mooney International Corporation, 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com*; Internet: *www.mooney.com*.

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on July 25, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18016 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0515; Directorate Identifier 2014–SW–036–AD; Amendment 39–17921; AD 2014–12–51]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France)

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

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for Airbus Helicopters Model EC130B4 and EC130T2 helicopters, which was sent previously to all known U.S. owners and operators of these helicopters. This AD requires repetitively inspecting the Fenestron to tailboom junction frame (junction frame) for a crack. This AD is prompted by reports of a crack propagating through the junction frame on two EC130B4 helicopters. These actions are intended to detect a crack and to prevent failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

DATES: This AD becomes effective August 20, 2014 to all persons except those persons to whom it was made immediately effective by Emergency AD (EAD) 2014–12–51, issued on June 10, 2014, which contained the requirements of this AD.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 20, 2014.

We must receive comments on this AD by October 6, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On June 10, 2014, we issued EAD 2014–12–51, which applies to helicopters with 690 or more hours time-in-service (TIS), and requires within 10 hours TIS, dye-penetrant inspecting certain areas of the junction frame for a crack. EAD 2014–12–51 also requires, at intervals not exceeding 25 hours TIS, either repeating the dye-penetrant inspection or performing a borescope inspection of certain areas of the junction frame for a crack. If there is a crack, EAD 2014–12–51 requires replacing the junction frame. EAD 2014–12–51 was sent previously to all known U.S. owners and operators of these helicopters.

EAD 2014–12–51 was prompted by EASA EAD No. 2014–0145–E, dated June 6, 2014 (EAD 2014–0145–E). EASA, which is the Technical Agent for the Member States of the European Union, issued EAD 2014–0145–E to correct an unsafe condition for Airbus Helicopters Model EC130B4 and EC130T2 helicopters. EASA advises that following unscheduled inspections, two events of crack propagation through the junction frame of the tailboom/Fenestron were reported on EC130B4 helicopters, and that an investigation revealed the cracks initiated in the lower right-hand part of the junction frame between the web and the flange where the lower spar of the tailboom is joined. EASA also advises that the cracks were of a significant length, and were not visible from the outside of the helicopter. Finally, EASA advises that this condition, if not detected, could lead to structural failure, possibly resulting in Fenestron detachment and consequent loss of control of the helicopter. EAD 2014–0145–E requires, within 10 hours TIS or 7 days, inspecting the junction frame in the radius between the web and the flange on the tailcone side for a crack. EAD 2014–0145–E also requires, at intervals not exceeding 25 hours TIS, inspecting the frame web for a crack with a borescope. If there is a crack, the EASA AD requires contacting Airbus Helicopters for repair procedures.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to

exist or develop on other helicopters of these same type designs.

Related Service Information

Airbus Helicopters has issued Emergency Alert Service Bulletin No. 05A017, Revision 0, dated June 6, 2014 (EASB 05A017) for Model EC130B4 and EC130T2 helicopters. EASB 05A017 describes procedures for inspecting, through the inside of the tailboom, the web of the frame and in the radius between the web and the flange on the tailcone side for a crack. If there is a crack, EASB 05A017 directs operators to contact Airbus Helicopters for specific procedures to return the helicopter to conformity.

AD Requirements

This AD requires, for helicopters with 690 or more hours TIS:

- Within 10 hours TIS, removing the horizontal stabilizer, cleaning the junction frame, and dye-penetrant inspecting the junction frame for a crack in the areas shown in Figure 1 of EASB 05A017;
- Within 25 hours of the dye-penetrant inspection, and at intervals not exceeding 25 hours TIS, either repeating the dye-penetrant inspection or, using a borescope, inspecting the junction frame for a crack in the areas shown in Figure 2 of EASB 05A017.
- If there is a crack, this AD requires, before further flight, replacing the junction frame.

Differences Between This AD and the EASA AD

EAD 2014–0145–E allows a visual inspection for the initial 10 hour TIS inspection, while this AD requires a dye-penetrant inspection. If there is a crack, EAD 2014–0145–E requires contacting Airbus Helicopters for approved repair instructions, while this AD requires replacing the junction frame. Finally, EAD 2014–0145–E requires inspecting the junction frame within 10 hours TIS or 7 days, whichever occurs earlier, while this AD requires inspecting within 10 hours TIS.

Interim Action

We consider this EAD to be an interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD will affect 194 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, dye-penetrant inspecting the junction frame will require 1 work-hour, for a cost per helicopter of $85, and a total cost of $16,490 for the fleet, per inspection cycle. Borescope inspecting the junction frame will require .5 work-hour, for a cost per helicopter of $43 and a total cost of $8,342 for the fleet, per inspection cycle.

If required, replacing the junction frame will require 50 work-hours, and required parts will cost $60,000, for a cost per helicopter of $64,250.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found and continue to find that the risk to the flying public justifies waiving notice and comment prior to adopting this rule because the initial required corrective action must be done within 10 hours time-in-service, a very short time period based on the average flight-hour utilization rate of these helicopters.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to the public interest and that good cause existed to make the AD effective immediately by EAD 2014–12–51, issued on June 10, 2014, to all known U.S. owners and operators of these helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

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

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–12–51 Airbus Helicopters (previously Eurocopter France): Amendment 39–17921; Docket No. FAA–2014–0515; Directorate Identifier 2014–SW–036–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC130B4 and EC130T2 helicopters, with 690 or more hours time-in-service (TIS), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the tailboom to Fenestron junction frame (junction frame). This condition could result in failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective August 20, 2014 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–12–51, issued on June 10, 2014, which contained the requirements of this AD.

(d) Compliance

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

(e) Required Actions

(1) Within 10 hours TIS, remove the horizontal stabilizer, clean the junction frame, and dye-penetrant inspect around the circumference of the junction frame for a crack in the areas shown in Figure 1 of Airbus Helicopters EC130 Emergency Alert Service Bulletin No. 05A017, Revision 0, dated June 6, 2014 (EASB 05A017). Pay particular attention to the area around the 4 spars (item b) of Figure 1 of EASB 05A017. An example of a crack is shown in Figure 3 of EASB 05A017.

(2) Within 25 hours TIS of the inspection required by paragraph (e)(1) of this AD, and thereafter at intervals not exceeding 25 hours TIS, either perform the actions of paragraph (e)(1) of this AD or, if the area is clean, using a borescope, inspect around the circumference of the junction frame for a crack in the areas shown in Figure 2 of EASB 05A017. Pay particular attention to the area around the 4 spars (item b) of Figure 2 of EASB 05A017. An example of a crack is shown in Figure 3 of EASB 05A017.

(3) If there is a crack, before further flight, replace the junction frame.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

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

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

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency EAD No. 2014–0145–E, dated June 6, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0515.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5302: Rotorcraft Tailboom.

(j) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Emergency Alert Service Bulletin No. 05A017, Revision 0, dated June 6, 2014.

(ii) [Reserved]

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

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

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

Issued in Fort Worth, Texas, on July 24, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–18247 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0056; Directorate Identifier 2013–NM–160–AD; Amendment 39–17906; AD 2014–15–04]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Saab AB, Saab Aerosystems Model SAAB 2000 airplanes. This AD was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing of an in-line heater in the lower part of the forward fuselage. This AD requires deactivating the potable water system, or alternatively filling and activating the potable water system. We are issuing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection and normal pitch control, and consequently result in reduced controllability of the airplane.

DATES: This AD becomes effective September 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 9, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0056*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.tech support@saabgroup.com*; Internet *http://www.saabgroup.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.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Saab AB, Saab Aerosystems Model SAAB 2000 airplanes. The NPRM published in the **Federal Register** on February 25, 2014 (79 FR 10433). The NPRM was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing of an in-line heater in the lower part of the forward fuselage.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0172R1, dated September 6, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the

MCAI''), to correct an unsafe condition for certain Saab AB, Saab Aerosystems Model SAAB 2000 airplanes. The MCAI states:

One occurrence of rudder pedal restriction has been reported on a SAAB 2000 aeroplane. Subsequent investigation showed that this was the result of water leakage at the inlet tubing for the in-line heater (25HY) in the lower part of the forward fuselage (Zone 116). The in-line heater attachment was found ruptured, which resulted in water spraying in the area. Frozen water on the rudder control mechanism in Zone 116 then led to the rudder pedal restriction.

Analysis after the reported event indicates that the pitch control mechanism (including pitch disconnect/spring unit) may also be frozen as a result of water spray, which would prevent disconnection and normal pitch control.

This condition, if not corrected, could result in further occurrences of reduced control of an aeroplane.

Prompted by these findings, as a temporary action to avoid this potential unsafe condition, SAAB determined that the potable water system should be deactivated. SAAB is working on a solution that is expected to eliminate the consequences of water spraying in the area.

To address this unsafe condition, EASA issued [an] Emergency AD * * * to require deactivation of the Potable Water System.

Since that [EASA] AD was issued, SAAB developed a temporary alternative procedure for filling, reactivation and continued operation of the potable water system. This procedure includes a visual inspection to make sure that there is no water spray in the lower part of the forward fuselage (Zone 116) during refilling of the potable water.

For the reasons described above, this [EASA] AD is revised to allow application of the alternative filling procedure of the Potable Water System.

This [EASA] AD is still considered to be an interim action and further [EASA] AD action may follow.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0056-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 10433, February 25, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 10433, February 25, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was 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 proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 10433, February 25, 2014) about these proposed changes. However, a comment was provided for another NPRM, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), in which the commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Saab AB, Saab Aerosystems' EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that does not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM discussed previously, Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate. We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH in the Contacting the Manufacturer paragraph of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 10433, February 25, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 10433, February 25, 2014).

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

Costs of Compliance

We estimate that this AD affects 1 airplane of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $85, or $85 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0056;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–04 Saab AB, Saab Aerosystems: Amendment 39–17906. Docket No. FAA–2014–0056; Directorate Identifier 2013–NM–160–AD.

(a) Effective Date

This AD becomes effective September 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category, serial numbers 004 through 016 inclusive, 018, 022, 023, 024, 026, 029, 031, 032, 033, 035 through 039 inclusive, 041 through 044 inclusive, 046, 047, 048, 051, and 053 through 063 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/Waste.

(e) Reason

This AD was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing for an in-line heater in the lower part of the forward fuselage. We are issuing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection and normal pitch control, and consequently result in reduced controllability of the airplane.

(f) Compliance

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

(g) Deactivation of Potable Water System

Within 30 days after the effective date of this AD, deactivate the potable water system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–38–010, dated July 12, 2013.

(h) Alternative to Deactivation of Potable Water System

As an alternative, or subsequent, to the action required by paragraph (g) of this AD, during each filling of the potable water system after the effective date of this AD, accomplish the temporary filling procedure, in accordance with the instructions in Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(i) 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; 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) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aerosystems' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0172R1, dated September 6, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0056-0002.*

(k) Material Incorporated by Reference

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

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

(i) Saab Service Bulletin 2000–38–010, dated July 12, 2013.

(ii) Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334 Issue A, dated September 9, 2013.

(3) For service information identified in this AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.*

(4) 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.

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

Issued in Renton, Washington, on July 13, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17315 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD; Amendment 39–17914; AD 2014–15–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. This AD was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting on the horizontal stabilizer. This AD requires inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; inspecting for correct bolt protrusion and chamfer of the bolts of the rear spar termination fitting of the horizontal stabilizer, if necessary; inspecting to determine if certain bolts are installed, if necessary; and doing related investigative and corrective actions if necessary. We are issuing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

DATES: This AD is effective September 9, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 9, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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–2012–0268; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a second supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes. The second SNPRM published in the **Federal Register** on December 9, 2013 (78 FR 73744). We preceded the second SNPRM with a first SNPRM that published in the **Federal Register** on March 7, 2013 (78 FR 14734). We preceded the first SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on March 20, 2012 (77 FR 16188).

The NPRM proposed to require inspecting for a serial number that starts with the letters ''SAIC'' on the left- and right-side horizontal stabilizer identification plate; a detailed inspection for correct bolt protrusion and chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, if necessary; inspecting to determine if certain bolts are installed, if necessary, and related investigative and corrective actions if necessary. The NPRM also proposed to require repetitive inspections for cracking of the termination fitting at certain bolt locations, and repair if necessary. The NPRM was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting on the horizontal stabilizer. The first SNPRM revised the NPRM by adding airplanes to the applicability. The second SNPRM

proposed to revise the applicable thresholds from flight cycles on the airplane to flight cycles accumulated on the affected horizontal stabilizer.

We are issuing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received on the second SNPRM (78 FR 73744, December 9, 2013).

Request To Provide Instructions To Correct Errors in Service Information

Europe Airpost requested that a note be included in the second SNPRM (78 FR 73744, December 9, 2013) to clarify the instructions for the re-installation of gap covers of the horizontal stabilizer and for the re-installation of the lower inboard trailing edge panels and the lower aft in-spar access doors if removed to perform actions. Europe Airpost stated that two of the four gap covers removed in Part 1, Steps f.(1) and f.(2), of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, have different part numbers than the part numbers listed in the re-installation instructions in Part 9, ''Close Access,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. Europe Airpost also stated that Boeing Service Bulletin 737–55–1090, dated March 30, 2011, does not include instructions for the re-installation of trailing edge panels and access doors near the horizontal stabilizer.

We agree with the request for the reason provided. Boeing Service Bulletin 737–55–1090, dated March 30, 2011, does not specify the correct gap cover numbers for the re-installation of the gap covers and does not specify adequate procedures for re-installation of the access doors and trailing edge panels. We have determined that operators may use their own maintenance procedures to accomplish the re-installation of the gap covers, access doors, and trailing edge panels. Therefore, we have added new paragraph (j)(6) to this final rule regarding the re-installation of gap covers, access doors, and trailing edge panels. Paragraph (j)(6) of this final rule indicates that any instructions specified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, regarding the removal and re-installation of gap covers, trailing edge panels, and access doors are not required by this AD.

Request To Identify Horizontal Stabilizers Using Serial Numbers

Boeing requested that the second SNPRM (78 FR 73744, December 9, 2013) be revised to allow identification of discrepant horizontal stabilizers using a list of SAIC serial numbers that Boeing stated it would provide. Boeing stated that using a list of specific serial numbers of suspect horizontal stabilizers would provide relief to operators from having to inspect stabilizers on airplanes prior to line number (L/N) 1556.

We do not agree with the request because, although a list of SAIC serial numbers identifying the suspect horizontal stabilizers may relieve operators from inspecting all airplanes prior to L/N 1556 to locate discrepant parts, no such list has been provided to the FAA. Boeing may submit this information to the FAA for approval as an alternative method of compliance (AMOC) using the procedures defined in paragraph (l) of this final rule. We have not changed this final rule in this regard.

Request To Revise Certain Terminology

Boeing and Southwest Airlines (Southwest) requested that the use of the word ''install'' in paragraph (k), ''Parts Installation Prohibition,'' of the second SNPRM (78 FR 73744, December 9, 2013) be clarified by noting that the word ''install'' means replace in this context. Southwest stated that use of the word ''install'' in paragraph (k) effectively reduces the compliance time to perform the inspections in paragraphs (g) and (h) of the second SNPRM, if the horizontal stabilizer is removed for any reason. Without added clarification, this could be interpreted to mean that any time a stabilizer is removed from an airplane for reasons not associated with this AD, and then re-installed on the same airplane, the inspections specified by paragraph (k) of the second SNPRM must immediately be accomplished.

We agree to provide clarification. The intent of the ''Parts Replacement Limitation'' specified in paragraph (k) of this final rule is that operators replace parts with good parts rather than bad parts. Although the word ''install'' is generally considered to be broader than the word ''replace,'' for purposes of this AD, it should be interpreted as meaning ''replace'' while remaining within the spirit and intent of the AD. Therefore, simply reinstalling the same part during maintenance activities is acceptable for compliance with paragraph (k) of this final rule for that reinstallation.

Request To Clarify Applicability

Southwest and All Nippon Airways (ANA) requested that paragraphs (g) and (h) of the second SNPRM (78 FR 73744, December 9, 2013) be clarified to specify which airplanes are subject to the proposed requirements. Southwest and ANA requested that paragraph (g)(2) of the second SNPRM be re-worded to state that any horizontal stabilizer that can be shown to have been delivered on an airplane having a line number after L/N 1556, through use of delivery documentation, should not require inspection, regardless of where that stabilizer is currently installed. Southwest stated that if it can verify that the horizontal stabilizer was originally delivered on an airplane having a line number after L/N 1556, then that stabilizer should not require any inspections in accordance with paragraph (g) of the second SNPRM. ANA stated that, on L/N 1556 and subsequent airplanes delivered with a correct horizontal stabilizer, no inspection is necessary provided the horizontal stabilizer is not rotated among the fleet. ANA requested that the inspections in paragraphs (g) and (h) of the second SNPRM be limited to airplanes delivered prior to the effective date of this AD.

We agree that the inspection requirements specified by paragraphs (g) and (h) in this final rule should be limited to airplanes delivered prior to the effective date of this AD provided the horizontal stabilizer has not been rotated among the fleet. We revised the exceptions provided by paragraphs (j)(4) and (j)(5) of this final rule to limit the applicability of those paragraphs by replacing the phrase ''airplanes, regardless of line number'' with the phrase ''airplanes, with original airworthiness certificate or original export certificate of airworthiness dated before the effective date of this AD.''

We have changed this final rule by adding paragraph (g)(3), which states:

> If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate on any airplane, and the serial number of the horizontal stabilizer is the same as stated in the delivery documentation of an airplane having a line number after L/N 1556, no further action is required by paragraph (g) of this AD for that horizontal stabilizer only.

We did not include L/N 1556, as requested by ANA, because L/N 1556 might be affected by the identified unsafe condition and therefore, must be inspected. We have redesignated paragraph (g)(3) of the second SNPRM as paragraph (g)(4) of this final rule.

Request To Include Inspection of Additional Part Numbered Bolt

Southwest and Delta Airlines requested that paragraphs (g)(3) and (j)(3) of the second SNPRM (78 FR 73744, December 9, 2013) include inspection of bolts having part number (P/N) BACB30XL so additional inspections and AMOCs will not be required if these alternative production bolts are found installed on an airplane. Delta stated that the AD needs to address the P/N BACB30XL bolts or wait until the service information is revised.

We do not agree with the request because Boeing Service Bulletin 737–55–1090, dated March 30, 2011, provides specific inspection criteria and measurements that are applicable only to bolts having P/N BACB30US. These criteria cannot be directly applied to bolts having P/N BACB30XL. The manufacturer plans to revise the service information to include bolts having P/N BACB30XL. However, to delay this final rule would be inappropriate because we have determined an unsafe condition exists and Boeing Service Bulletin 737–55–1090, dated March 30, 2011, addresses the unsafe condition for bolts having P/N BACB30US. When the revised service information is available, we will review the service information and may approve the revised instructions as an AMOC to this final rule. We have not changed this final rule in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the second SNPRM (78 FR 73744, December 9, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the second SNPRM (78 FR 73744, December 9, 2013).

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

Costs of Compliance

We estimate that this AD affects 1,147 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle	$0	$85	$97,495
Replacement of bolts	17 work-hours × $85 per hour = $1,445	1,530	2,975	3,412,325

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–15–12 The Boeing Company: Amendment 39–17914; Docket No. FAA–2012–0268; Directorate Identifier 2011–NM–129–AD.

(a) Effective Date

This AD is effective September 9, 2014.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which

STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of incorrectly installed bolts common to the rear spar termination fitting on the horizontal stabilizer. We are issuing this AD to prevent loss of structural integrity of the horizontal stabilizer attachment and loss of control of the airplane.

(f) Compliance

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

(g) Inspecting the Horizontal Stabilizer and Corrective Actions

For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, except as provided by paragraphs (j)(4) and (j)(5) of this AD: Except as provided by paragraphs (i) and (j) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do an inspection for a serial number that starts with the letters ''SAIC'' on the identification plates of the left- and right-side horizontal stabilizers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. A review of manufacturer delivery and operator maintenance records is acceptable to make the determination specified in this paragraph if the serial number can be conclusively identified from that review.

(1) If no ''SAIC'' serial number is found, no further action is required by paragraph (g) of this AD.

(2) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate on an airplane after line number (L/N) 1556, and the serial number of the horizontal stabilizer is the same as stated in the delivery documentation of the airplane, no further action is required by paragraph (g) of this AD for that horizontal stabilizer only.

(3) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate on any airplane, and the serial number of the horizontal stabilizer is the same as stated in the delivery documentation of an airplane having a line number after L/N 1556, no further action is required by paragraph (g) of this AD for that horizontal stabilizer only.

(4) If a serial number starting with the letters ''SAIC'' is found on a horizontal stabilizer identification plate, except as specified in paragraphs (g)(2) and (g)(3) of this AD: Except as provided by paragraphs (i) and (j) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do a detailed inspection for correct bolt protrusion and correct chamfer of the termination fitting bolts of the horizontal stabilizer rear spar, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. Concurrently with the detailed inspection, inspect to determine if any bolt other than part number (P/N) BACB30US14K() or BACB30US16K(), as applicable, is installed. Before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(h) High Frequency Eddy Current (HFEC) and Ultrasonic Inspections of Termination Fitting and Repair

For airplanes identified in paragraph (g)(4) of this AD at any location where a new bolt having a P/N BACB30US14K() is installed as corrective action for damage found during any inspection required by paragraph (g) of this AD: Except as provided by paragraphs (i) and (j) of this AD, at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, do HFEC and ultrasonic inspections for cracking of the forward and aft sides of the termination fitting, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–55–1090, dated March 30, 2011. If any crack is found in any termination fitting: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Repeat the HFEC and ultrasonic inspections thereafter at intervals not to exceed 3,500 flight cycles on the horizontal stabilizer.

(i) Clarification of Compliance Time

Where the compliance times stated in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, are ''total flight cycles,'' the compliance time in this AD is total flight cycles accumulated on the horizontal stabilizer since new.

(j) Exceptions to Service Information Specifications

(1) Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, specifies a compliance time ''after the original issue date on the service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Figure 1 of Boeing Service Bulletin 737–55–1090, dated March 30, 2011, points to the location of a part number rather than the serial number, this AD requires an inspection for an identification plate with a serial number that starts with the letters ''SAIC.''

(3) If, during any inspection required by paragraphs (g) and (h) of this AD, any bolt other than P/N BACB30US14K() or BACB30US16K(), as applicable, is found: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(4) Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, identifies Group 1 airplanes as 737–600, –700, –800, and –900 airplanes having line numbers 379 through 1556 inclusive, this AD specifies Group 1 airplanes as 737–600, –700, –800, –900, and –900ER airplanes ''with original airworthiness certificate or original export certificate of airworthiness dated before the effective date of this AD.''

(5) Where Boeing Service Bulletin 737–55–1090, dated March 30, 2011, identifies Group 2 airplanes as 737–700C airplanes having line number 496 through 1548 inclusive, this AD specifies Group 2 airplanes as 737–700C airplanes ''with original airworthiness certificate or original export certificate of airworthiness dated before the effective date of this AD.''

(6) Any instructions specified in Boeing Service Bulletin 737–55–1090, dated March 30, 2011, regarding the removal and re-installation of gap covers, trailing edge panels, and access doors are not required by this AD.

(k) Parts Replacement Limitation

As of the effective date of this AD, no person may install a horizontal stabilizer on any airplane included in the applicability of this AD, unless the horizontal stabilizer has been inspected and any applicable corrective actions have been done in accordance with paragraphs (g) and (h) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Related Information

For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 737–55–1090, dated March 30, 2011.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on July 17, 2014.

John P. Piccola,

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

[FR Doc. 2014–17548 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0670]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, in Seattle, WA. The deviation is necessary to accommodate vehicular traffic attending football games at Husky Stadium at the University of Washington, Seattle, Washington. This deviation allows the bridge to remain in the closed position two hours before and two hours after each game. Please note that the game times for five of the seven games scheduled for Husky Stadium have not yet been determined due to NCAA television scheduling.

DATES: This deviation is effective from 10 a.m. on September 6, 2014 through November 22, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0670] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Steven M. Fischer, Bridge Specialist, Thirteenth District, Coast Guard; telephone 206–220–7277, email *Steven.M.Fischer3@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation, on behalf of the University of Washington Police Department, has requested that the Montlake Bridge bascule span remain closed and need not open to vessel traffic to facilitate timely movement of pre-game and post-game football traffic. The Montlake Bridge crosses the Lake Washington Ship Canal at mile 5.2 and while in the closed position provides 30 feet of vertical clearance throughout the navigation channel and 46 feet of vertical clearance throughout the center 60-feet of the bridge. These vertical clearance measurements are made in reference to the Mean Water Level of Lake Washington. Vessels which do not require a bridge opening may continue to transit beneath the bridges during this closure period. Under normal conditions this bridge opens on signal, subject to the list of exceptions provided in 33 CFR 117.1051(e).

This deviation period will cover the dates September 6, 2014 to November 22, 2014 as follows. From 10 a.m. to Noon, and from 3 p.m. to 5 p.m. on September 6, 2014; from 11 a.m. to 1 p.m. and from 4 p.m. to 6 p.m. on September 13, 2014. The times for the closures on September 20, 2014, September 27, 2014, October 25, 2014, November 8, 2014, and November 22, 2014 will be determined and announced in the Coast Guard's Local Notice to Mariners and Broadcast Notice to Mariners as they become available. Due to NCAA television scheduling, the times for the games are not currently available.

The deviation allows the bascule span of the Montlake Bridge to remain in the closed position and need not open for maritime traffic from 10 a.m. to Noon, and 3 p.m. to 5 p.m. on September 6, 2014, and from 11 a.m. to 1 p.m., and 4 p.m. to 6 p.m. on September 13, 2014, for times to be determined on September 20, 2014, September 27, 2014, October 25, 2014, November 8, 2014, and November 22, 2014. The bridge shall operate in accordance to 33 CFR § 117.1051(e) at all other times. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: July 24, 2014.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2014–18372 Filed 8–4–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0609]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that govern four Multnomah County bridges: The Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, all crossing the Willamette River at

Portland, OR. This deviation is necessary to accommodate the annual Portland Providence Bridge Pedal event. This deviation allows the bridges to remain in the closed position to allow safe roadway movement of event participants.

DATES: This deviation is effective from 6 a.m. on August 10, 2014, to 12:30 p.m. on August 10, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0609] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *Steven.M.Fischer3@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested a temporary deviation from the operating schedule for the Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, all crossing the Willamette River at Portland, OR. The requested deviation is to accommodate the annual Providence Bridge Pedal event. To facilitate this event, the draws of the bridges will be maintained in the closed-to-navigation positions as follows: The Broadway Bridge, mile 11.7; the Burnside Bridge, mile 12.4; Morrison Bridge, mile 12.8; and the Hawthorne Bridge, mile 13.1, need not open for vessel traffic from 6 a.m. on August 10, 2014, to 12:30 p.m. on August 10, 2014. Vessels which do not require bridge openings may continue to transit beneath these bridges during this closure period. The Broadway Bridge, mile 11.7, provides a vertical clearance of 90 feet in the closed position, the Burnside Bridge, mile 12.4, provides a vertical clearance of 64 feet in the closed position, the Morrison Bridge, mile 12.8, provides a vertical clearance of 69 feet in the closed position, and the Hawthorne Bridge, mile 13.1, provides a vertical clearance of 49 feet in the closed position; all clearances are referenced to the vertical clearance above Columbia River Datum 0.0. The current operating schedule for all four bridges is set out in 33 CFR 117.897. The normal operating schedule for all four bridges state that they need not open from 7 a.m. to 9 a.m., and from 4 p.m. to 6 p.m. Monday through Friday. This deviation period is from 6 a.m. on August 10, 2014, to 12:30 p.m. August 10, 2014. The deviation allows the Broadway Bridge, mile 11.7, the Burnside Bridge, mile 12.4, the Morrison Bridge, mile 12.8, and the Hawthorne Bridge, mile 13.1, across the Willamette River, to remain in the closed position and need not open for maritime traffic from 6 a.m. to 12:30 p.m. on August 10, 2014. The four bridges shall operate in accordance to 33 CFR § 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: July 18,2014.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2014–18390 Filed 8–4–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0645]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs The Broadway Bridge, across the Willamette River, mile 11.7, at Portland, OR. This deviation is necessary to accommodate the 2014 Pints to Pasta foot race event. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 7:30 a.m. on September 7, 2014 to 10:30 a.m. on September 7, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0645] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7234 email *Steven.M.Fischer3@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested a temporary deviation from the operating schedule for the Broadway Bridge, mile 11.7, crossing the Willamette River at Portland, OR. The requested deviation is to accommodate the annual Pints to Pasta event. To facilitate this event, the draw of the bridge will be maintained in the closed-to-navigation positions as follows: The Broadway Bridge, at mile 11.7, crosses the Willamette River and provides 90 feet of vertical clearance above Columbia River Datum 0.0 need not open for vessel traffic from 7:30 a.m. on September 7, 2014, to 10:30 p.m. on September 7, 2014. Vessels which do not require a bridge opening may continue to transit beneath this bridge during the closure period. The normal operating conditions for this bridge operates in accordance with 33 CFR 117.897 which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday. This deviation period is from 7:30 a.m. on September 7, 2014 to 10:30 a.m. September 7, 2014. This deviation allows the Broadway Bridge, at mile 11.7 across the Willamette River, to

remain in the closed position and need not open for maritime traffic from 7:30 a.m. through 10:30 a.m. on September 7, 2014. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: July 24, 2014.

Steven M. Fischer,

Bridge Administrator.

[FR Doc. 2014–18370 Filed 8–4–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.373M.]

Final Priority; Technical Assistance on State Data Collection—IDEA Data Management Center

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

ACTION: Final priority.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS) announces a priority under the Technical Assistance on State Data Collection program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2014 and later years. We take this action to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Center) that will provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA).

DATES: This priority is effective September 4, 2014.

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW., Room 4071, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–6028 or by email: *Meredith.Miceli@ed.gov.*

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

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve funds appropriated under Part B of the IDEA to provide TA activities authorized under section 616(i) of IDEA. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of IDEA section 616 are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under IDEA Parts B and C, which include the data collection requirements in IDEA sections 616 and 618.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), and 1442.

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority for this competition in the **Federal Register** on April 17, 2014 (79 FR 21663). That notice contained background information and our reasons for proposing this particular priority. Except for minor editorial and technical revisions (noted below), there are no differences between the proposed priority and this final priority. We made these minor technical revisions:

(a) Clarified the types of supports and TA the Center must provide when assisting States in the use of the open source tools developed, as described in subsection (b) of the *Technical Assistance and Dissemination Activities* section of this priority;

(b) Added the Center on Systemic Improvement (CSI) (if funded) [1] to the list of Department-funded projects that the Center must communicate and collaborate with on an ongoing basis, as described in subsection (a) of the *Coordination Activities* section of this priority;

(c) Added application requirement (b)(4)(ii), which requires applicants to demonstrate how the Center will support State staff in taking a leadership role in restructuring and aligning data systems within States that are receiving TA from the Center; and

(d) Revised application requirement (f)(4)(ii), which requires applicants to budget for a two and one-half day project directors' meeting in Washington, DC, to occur every other year beginning with the meeting scheduled for Summer, 2016.

Public Comment: In response to our invitation in the notice of proposed priority, three parties submitted comments on the proposed priority.

We group major issues according to subject. Generally, we do not address technical and other minor changes, or comments not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: Three commenters indicated there was overlap between the Center's activities and the activities of the IDEA Data Center (IDC) and the Center for IDEA Early Childhood Data Systems (DaSy).

Discussion: We do not agree that there is overlap between the Center's activities and the activities of IDC and DaSy. The Center will focus on: (1) Providing TA to States to improve their data management procedures and data systems architecture to build data files and reports to improve States' capacity to meet the Part B reporting requirements under sections 616 and 618 of IDEA; and (2) improving States' capacity to work with source systems (e.g., statewide longitudinal data systems (SLDS)) to report high-quality data as required under sections 616 and 618 of IDEA. The other data centers (IDC and DaSY) funded by the Office of Special Education Programs (OSEP) do not address the need to assist States in restructuring their existing, often fragmented, data systems and in aligning their data collection for students with disabilities with their data collection for the general student population in the SLDS so that States can improve the validity and reliability of the data they report to the Secretary and the public as required under section 616 and 618 of IDEA. The IDC is focused on assisting States with developing necessary data validation

[1] For additional information regarding CSI, see: *www.gpo.gov/fdsys/pkg/FR-2014-06-17/pdf/2014-14154.pdf.*

processes and procedures to ensure high-quality data submissions to OSEP, but does not work on data management or system architecture. DaSy provides TA to States to support Part C and Part B State preschool programs' participation in the development or enhancement of integrated early childhood data systems. *Changes:* None.

Comment: Two commenters stressed the importance of including general education staff in efforts to restructure and align data systems within the State; and one commenter indicated that States, rather than an OSEP-funded center, should take the lead in these efforts.

Discussion: We agree it is important to include general education staff in the restructuring and alignment of data systems within the State. For this reason, we are requiring the Center to collaborate and coordinate with the State SLDS programs. Additionally, we are requiring the Center to use the Common Education Data Standards (CEDS) that the Department has coordinated the development of in collaboration with States and local school districts. We anticipate that this Center will help special education staff engage and work with the general education and SLDS staff within their States to reach the goal of using SLDS to report high-quality IDEA data. We also agree that States can and should lead these efforts and have revised the priority to clarify their role.

Changes: We have revised paragraph (b)(4)(ii) of the application requirements of the priority to require that applicants describe how the Center will support State staff in taking a leadership role in restructuring and aligning data systems within the States that are receiving TA from the Center.

Comment: Two commenters noted the significant effort and time a State would need to invest in order to appropriately use an open source tool. These commenters noted that States would need to transfer data into a data store from which an ED*Facts* file could be created with the open source tool. They stressed that each State would need to get its data into a uniform file structure in order for the generic code to create the ED*Facts* files. In addition, these commenters questioned whether the open source tool would be worth the amount of time and money it would take to create it.

Discussion: We anticipate that the Center will provide TA on preparing State data for use with open source tools and that this assistance will be highly valued by many States and, therefore, an excellent use of Federal funds. State utilization of the open source tools will be on a voluntary basis.

We expect that the open source tools will be based on CEDS. CEDS will provide a common vocabulary and data model for all States to use in order to make the open source tools accessible. The Center will assist States in mapping their data systems to CEDS in order to use the open source tool. We have revised the priority to clarify that the Center must provide this assistance.

Changes: In paragraph (b)(3) of the *Technical Assistance and Dissemination Activities* section of the priority, we have added, as a required activity, that the Center assist States in preparing their data for use of the open source tools that are developed under this priority.

Comment: One commenter recommended that the Center work with CSI to provide TA to States on using the data systems developed or refined by the proposed Center's work in the development of their State Systemic Improvement Plans (SSIP).

Discussion: We agree that the IDEA Data Management Center should collaborate and coordinate with CSI (if funded) to further promote the use of high-quality IDEA data.

Changes: We have revised the priority to include CSI in the list of Department-funded projects that the Center will communicate and collaborate with on an ongoing basis.

Comment: One commenter recommended that the Center work with the Department to integrate and align the various reporting systems as a way to improve the overall quality of the data and facilitate use of the data.

Discussion: We understand the commenter's suggestion. Neither the Department nor the Center can revise the data that States must submit to the Department under different statutes (e.g., sections 616 and 618 of IDEA and under the Elementary and Secondary Education Act). However, under this priority, the Department has the authority, under section 616(i)(2) of IDEA, to provide TA (from funds reserved under section 611(c) from FY 2013) to improve the capacity of States to meet the IDEA Part B and Part C data collection requirements. Thus, the Center will assist the Department by helping States directly integrate and align State-level data reporting systems as a way to improve the overall quality of the data and facilitate use of the data that is reported to the Department and used by the public.

Changes: None.

Final Priority:

IDEA Data Management Center.

The purpose of this priority is to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Center) to achieve, at a minimum, the following expected outcomes: (a) Improve States' data management procedures and data systems architecture to build data files and reports to improve States' capacity to meet the Part B reporting requirements under sections 616 and 618 of IDEA; and (b) improve States' capacity to utilize their SLDS to report high-quality data under IDEA Part B as required under sections 616 and 618 of IDEA. The Center's work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA and will not provide the Department with access to child-level data.

Project Activities. To meet the requirements of this priority, the IDEA Data Management Center, at a minimum, must:

Knowledge Development Activities in Year One.

(a) Document the methods of collecting, processing, and reporting the IDEA Part B section 616 and 618 data for the 60 State educational agencies (SEAs). The documentation must align the data used by the States to meet the Part B IDEA data to the Common Education Data Standards (CEDS).

(b) Analyze the methods of collecting, processing, and reporting the Part B IDEA data for commonalities and challenges and identify States in need of intensive or targeted TA.

Technical Assistance and Dissemination Activities.

(a) Provide intensive TA [2] to at least 10 States to improve their ability to utilize SLDS as sources for reporting Part B data required under sections 616 and 618 of IDEA. The Center must use information obtained through the activities described under paragraph (a) of the *Knowledge Development Activities in Year One* section of this priority to inform the intensive TA, which must be focused on States that are not using their SLDS to report their IDEA Part B section 616 and 618 data.

Note: Applicants must describe the methods and criteria they will use to recruit and select States for intensive TA. The Center

[2] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

must obtain approval from OSEP on the final selection of intensive TA States.

(b) Provide a range of targeted and general TA products and services for improving States' capacity to report high-quality Part B data required under sections 616 and 618 of IDEA. Such TA must include, at a minimum:

(1) Working with the Department to develop open source electronic tools to assist States in building ED*Facts* data files and reports that can be submitted to the Department and made available to the public. The tools must utilize CEDS and meet all States' and entities' needs associated with reporting the Part B data required under sections 616 and 618 of IDEA;

(2) Developing a plan to maintain the appropriate functionality of the open source electronic tools described in paragraph (1) as changes are made to data collections, reporting requirements, file specifications, and CEDS;

(3) Assisting States in preparing their data in order to use the open source electronic tools (e.g., transforming data into a data store);

(4) Conducting training with State staff to use the open source electronic tools;

(5) Developing CEDS ''Connections'' [3] to calculate metrics needed to report the Part B data required under sections 616 and 618 of IDEA; and

(6) Developing white papers and presentations that include tools and solutions to challenges in data management procedures and data system architecture for reporting the Part B data required under sections 616 and 618 of IDEA.

Coordination Activities.

(a) Communicate and coordinate, on an ongoing basis, with other Department-funded projects, including those providing data-related support to States, such as IDC, DaSy, the CEDS initiative, the SLDS program, the Privacy Technical Assistance Center, and CSI (if funded); and

(b) Maintain ongoing communication with the OSEP project officer.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority. OSEP encourages innovative approaches to meet these requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, and accurately reporting valid and reliable IDEA data on State data management procedures and data systems architecture and in building ED*Facts* data files and reports for timely and accurate reporting of the IDEA data to the Department and the public. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections and ED*Facts* file specifications for the IDEA data collection; and

(ii) Present information about the difficulties that States have encountered in the collection and submission of valid and reliable IDEA data;

(2) Result in improved IDEA data collection and reporting.

(b) Demonstrate, in the narrative section of the application under ''Quality of the Project Services,'' how the proposed project will—

(1) Achieve the project's goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) The logic model by which the proposed project will achieve its intended outcomes;

(2) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among them, and any empirical support for this framework;

(3) Be based on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of IDEA data collection strategies, data management procedures, and data systems architectures;

(ii) How the current research about adult learning principles and implementation science will inform the proposed TA; and

(iii) How the proposed project will incorporate current research and evidence-based practices in the development and delivery of its products and services;

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it will develop knowledge of States' data management processes and data systems architecture;

(ii) How it will facilitate and support the leadership role State staff will take in improving States' data management procedures and data systems architecture;

(iii) Its proposed approach to universal, general TA [4] for the 60 SEAs;

(iv) Its proposed approach to targeted, specialized TA,[5] which must identify—

(A) The intended recipients of the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local educational agency (LEA) level, as appropriate;

(v) Its proposed approach to intensive, sustained TA, which must identify—

(A) The intended recipients of the products and services under this approach;

(B) Its proposed approach to measure the readiness of the SEAs to work with the proposed project including the SEAs' commitment to the initiative, fit of the initiatives, current infrastructure, available resources, and ability to build capacity at the LEA level, as appropriate; and

(C) Its proposed plan for assisting SEAs to build training systems that include professional development based on adult learning principles and coaching.

(5) Develop products and implement services to maximize the project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes; and

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration.

[3] For more information on CEDS Connections, see: *https://ceds.ed.gov/connect.aspx.*

[4] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[5] ''Targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how—

(1) The proposed project will collect and analyze data on specific and measurable goals, objectives, and intended outcomes of the project. To address this requirement, the applicant must describe its—

(i) Proposed evaluation methodologies, including instruments, data collection methods, and analyses; and

(ii) Proposed standards of effectiveness;

(2) The proposed project will use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving the intended outcomes; and

(3) The methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) How key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include in Appendix A of the application a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589;*

(2) Include in Appendix A of the application a conceptual framework for the project;

(3) Include in Appendix A of the application person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(4) Include in the proposed budget funding for attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' meeting in Washington, DC, to occur every other year beginning with the meeting scheduled for Summer, 2016;

(iii) Two annual two-day trips for Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive review meeting in Washington, DC, during the last half of the second year of the project period;

(5) Include in the budget a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a Web site that meets government or industry-recognized standards for accessibility.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

An IDEA Data Management Center funded under the priority established by this regulatory action will assist States in complying with Federal laws and regulations. Without this regulatory action, the burden of improving State capacity to collect, report, and analyze IDEA data would fall solely on the responsible State and local entities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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

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

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

Dated: July 31, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–18481 Filed 8–4–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0022; FRL–9914–53–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Redesignation Requests, Associated Maintenance Plans, and Motor Vehicle Emissions Budgets for the Delaware Portion of the Philadelphia-Wilmington, PA–NJ–DE Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standards, and the 2007 Comprehensive Emissions Inventory for the 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Delaware's requests to redesignate to attainment the Delaware portion of the Philadelphia-Wilmington, PA–NJ–DE nonattainment area (hereafter ''the Philadelphia Area'' or ''the Area'') for both the 1997 annual and the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS or standards). EPA is also approving as revisions to the Delaware State Implementation Plan (SIP), the associated maintenance plans to show maintenance of the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS through 2025 for the Delaware portion of the Area. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. EPA is also determining that the Delaware portion of the Philadelphia Area continues to attain both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. In addition, EPA is approving the 2007 emissions inventory for the Delaware portion of the Area for

the 2006 24-hour $PM_{2.5}$ NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on September 4, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0022. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2012, the Delaware Department of Natural Resources and Environmental Control (DNREC) formally submitted two separate requests to redesignate the Delaware portion of the Philadelphia Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, respectively. With the redesignation requests, DNREC submitted maintenance plans as SIP revisions to ensure continued attainment of the standards throughout the Delaware portion of the Area over the next 10 years. Each maintenance plan contains MVEBs for the Delaware portion of the Area for transportation conformity purposes. The December 12, 2012 submittal for the 2006 24-hour $PM_{2.5}$ NAAQS also includes a 2007 comprehensive emissions inventory to meet the requirement of section 172(c)(3) of the CAA for the 2006 24-hour $PM_{2.5}$ NAAQS.

On April 11, 2014 (79 FR 20139), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of Delaware's redesignation requests for the Delaware portion of the Philadelphia Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA also proposed approval of the associated maintenance plans as SIP revisions for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards, and the MVEBs included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. In addition, EPA proposed approval of the 2007 emissions inventory for the Delaware portion of the Area for the 2006 24-hour $PM_{2.5}$ NAAQS. Finally, EPA proposed that the Philadelphia Area continues to attain both the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

In the April 11, 2014 NPR, EPA addressed the effects of two decisions of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court): The D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the 1997 annual $PM_{2.5}$ standard and the D.C. Circuit Court's August 21, 2012 decision to vacate and remand to EPA the Cross-State Air Pollution Control Rule (CSAPR). However, subsequent to publication of the NPR, United States Supreme Court reversed the D.C. Circuit decision vacating and remanding CSAPR in *EPA* v. *EME Homer City Generation, L.P.,* 134 S.Ct. 1584 (2014).

EPA has considered the recent decision from the U.S. Supreme Court regarding CSAPR, and has concluded that the decision does not alter the Agency's decision to redesignate the Delaware portion of the Philadelphia Area to attainment for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA promulgated CSAPR (76 FR 48208, August 8, 2011) to replace the Clean Air Interstate Rule (CAIR), which has been in place since 2005. *See* 76 FR 59517. The rules require significant reductions in emissions of sulfur dioxide (SO_2) and oxides of nitrogen (NO_X) from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. The D.C. Circuit Court initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). After staying implementation of CSAPR on December 20, 2011 and instructing EPA to continue to implement CAIR in the interim, on August 21, 2012, the D.C. Circuit Court issued a decision to vacate CSAPR, with further instruction to continue administering CAIR ''pending the promulgation of a valid replacement.''

As stated in the April 11, 2014 NPR, Delaware does not rely on either CAIR or CSAPR for emission reductions that contributed to the Delaware portion of the Philadelphia Area's attainment of the 1997 and 2006 $PM_{2.5}$ NAAQS, nor does the State rely on either of the rules in its maintenance plans. However, because CAIR was promulgated in 2005 and incentivized sources and states to begin achieving early emission reductions, the air quality data examined by EPA in issuing the final determinations of attainment for the Philadelphia Area for the 1997 and 2006 $PM_{2.5}$ NAAQS (77 FR 28782, May 16, 2012 and 78 FR 882, January 7, 2013)) and the air quality data from the area since 2005 necessarily reflect reductions in emissions from upwind sources as a result of CAIR.

Nonetheless, in this case, EPA believes that it is appropriate to redesignate the Delaware portion of the Philadelphia Area. As stated in the April 11, 2014 NPR, modeling conducted by EPA during the CSAPR rulemaking process, which used a baseline emissions scenario that ''backed out'' the effects of CAIR, *see* 76 FR at 48223, projected that the counties in the Philadelphia Area would have $PM_{2.5}$ levels below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. *See* ''Air Quality Modeling Final Rule Technical Support Document,'' Appendix B, pages B–37, B–51, B–57, B–58, B–66, B–80, B–86. This modeling is available in the docket for this rulemaking action. In addition, the 2010–2012 quality-assured, quality-controlled, and certified monitoring data for the Philadelphia Area confirms that 2012 $PM_{2.5}$ annual design values for each monitoring site in the Area remained well below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and thus the entire Area continued to attain the standard in 2012. As stated in the NPR, 2010–2012 annual and 24-hour design values for the Philadelphia Area are 13.1 micrograms per cubic meter ($\mu g/m^3$) and 31 $\mu g/m^3$, respectively and preliminary 2011–2013 annual and 24-hour design values of 12.3 $\mu g/m^3$ and 28 $\mu g/m^3$, respectively. In addition, as stated in the April 11, 2014 NPR, emissions of SO_2 and NO_X, the two pollutants targeted by CAIR and CSAPR, have decreased greatly since the Philadelphia Area was designated as nonattainment for the 1997 and 2006 $PM_{2.5}$ NAAQS, and those reductions are projected to continue throughout the maintenance period. Between 2002 and

2007, NO_X and SO_2 emissions were reduced by 25 percent and 70 percent, respectively, in the Delaware portion of the Philadelphia Area. For maintenance of the 1997 annual NAAQS, between 2007 and 2025, NO_X and SO_2 emissions are projected to decrease by 40 percent and 54 percent, respectively, in the Delaware portion of the Philadelphia Area. For maintenance of the 2006 24-hour NAAQS, between 2008 and 2025, NO_X and SO_2 emissions are projected to decrease by 38 percent and 61 percent, respectively, in the Delaware portion of the Philadelphia Area. These reductions are due to a combination of strong state and federal control measures that were listed in the NPR, and do not include any emission reductions from CAIR or CSAPR.

The status of CSAPR is not relevant to these redesignations. CSAPR was promulgated in June 2011, and the rule was stayed by the D.C. Circuit Court just six months later, before the trading programs it created were scheduled to go into effect. Therefore, the Philadelphia Area's attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS cannot have been a result of any emission reductions associated with CSAPR. In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of these redesignation requests for the Delaware portion of the Philadelphia Area.

Specific details of Delaware's submittals and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR. EPA did receive one public comment in support of this rulemaking action, which can be found in the publicly available docket for this rulemaking action.

II. Final Action

EPA is approving Delaware's requests to redesignate the Delaware portion of the Philadelphia Area from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA has evaluated Delaware's redesignation requests and determined that upon approval of the 2007 comprehensive emissions inventory for the 2006 24-hour $PM_{2.5}$ NAAQS proposed as part of this rulemaking action, it would meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both standards. As stated in greater detail in the April 11, 2014 NPR, EPA believes that the monitoring data demonstrate that the entire Philadelphia Area is attaining and will continue to attain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. EPA is also proposing to approve the associated maintenance plans for the Delaware portion of the Area as a revision to the Delaware SIP for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards because they meet the requirements of CAA section 175A for both standards. For transportation conformity purposes, EPA is also proposing to approve MVEBs for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. Final approval of the redesignation requests would change the official designations of the Delaware portion of the Philadelphia Area for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, respectively, found at 40 CFR part 81, from nonattainment to attainment, and would incorporate into the Delaware SIP the associated maintenance plans ensuring continued attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in the Delaware portion of the Area for the next 10 years, until 2025.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 October 6, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, in which EPA is approving of the redesignation requests and maintenance plans for the Delaware portion of the Philadelphia Area for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, MVEBs included in Delaware's maintenance plans for the Delaware portion of the Area for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, and the 2007 comprehensive emissions inventory for the 2006 24-hour $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 11, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart I— Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding entries for the 1997 Annual and the 2006 24-Hour $PM_{2.5}$ Maintenance Plans for the Delaware Portion of the Philadelphia-Wilmington, PA–NJ–DE Area (New Castle County) at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *		*	* *	*
Maintenance plan contained in ''Delaware Redesignation Request and Maintenance Plan Under the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standard For the New Castle County Portion of the Philadelphia-Wilmington, PA–NJ–DE Nonattainment Area for Fine Particles,'' dated November 27, 2012.	New Castle County.	12/12/2012	8/5/2014 *[Insert page number where the document begins].*	See § 52.427(d).
Maintenance plan contained in ''Delaware Redesignation Request and Maintenance Plan Under the 2006 Daily $PM_{2.5}$ National Ambient Air Quality Standard For the New Castle County Portion of the Philadelphia-Wilmington, PA–NJ–DE Nonattainment Area for Fine Particles,'' dated November 27, 2012.	New Castle County.	12/12/2012	8/5/2014 *[Insert page number where the document begins].*	See § 52.427(e).

■ 3. Section 52.423 is amended by revising the section heading and by adding paragraph (d) to read as follows:

§ 52.423 Base year emissions inventory.

* * * * *

(d) EPA approves as a revision to the Delaware State Implementation Plan the comprehensive emissions inventory for the Delaware portion of the Philadelphia-Wilmington, PA–NJ–DE 2006 24-hour fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the Delaware Department of Natural Resources and Environmental Control on December 12, 2012. The 2007 year emissions inventory includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources for New Castle County, Delaware. The pollutants that comprise the inventory are nitrogen oxides (NO_X), volatile organic compounds (VOCs), $PM_{2.5}$, ammonia (NH_3), and sulfur dioxide (SO_2).

■ 4. Section 52.427 is amended by adding paragraphs (d) and (e) to read as follows:

§ 52.427 Control strategy: Particular matter.

* * * * *

(d) EPA approves the maintenance plan for the Delaware portion of the Philadelphia-Wilmington, PA–NJ–DE $PM_{2.5}$ Nonattainment Area (New Castle County) for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on December 12, 2012. The maintenance plans include motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware.

NEW CASTLE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS

[tpy]

Type of control strategy SIP	Year	NO_X	$PM_{2.5}$	Effective date of SIP approval
Maintenance Plan	2017 Interim Budget	6,273	199	9/4/2014
	2025 Final Budget	6,273	199	

(e) EPA approves the maintenance plan for the Delaware portion of the Philadelphia-Wilmington, PA–NJ–DE $PM_{2.5}$ Nonattainment Area (New Castle County) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on December 12, 2012. The maintenance plans include motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware.

NEW CASTLE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS

[tpy]

Type of control strategy SIP	Year	NO_X	$PM_{2.5}$	Effective date of SIP approval
Maintenance Plan	2017 Interim Budget	6,273	199	9/4/2014
	2025 Final Budget	6,273	199	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 5. The authority citation for Part 81 continues to read as follows:

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

■ 6. In § 81.308, the tables for Delaware—1997 Annual $PM_{2.5}$ NAAQS [Primary and secondary] and Delaware—2006 24-Hour $PM_{2.5}$ NAAQS [Primary and secondary] are amended by removing footnote number 2 in each table and revising the entries for the Philadelphia-Wilmington, PA–NJ–DE Area to read as follows:

§ 81.308 Delaware.

* * * * *

DELAWARE—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date	Type
Philadelphia-Wilmington, PA–NJ–DE: New Castle County	8/5/2014	Attainment		
* * * *	*		*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

DELAWARE—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date	Type
Philadelphia-Wilmington, PA–NJ–DE: New Castle County	8/5/2014	Attainment		
* * * *	*		*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.

* * * * *

[FR Doc. 2014–18205 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11–154; FCC 14–97]

Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, as part of the Commission's continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), it concludes that clips of video programming covered by the statute must be captioned when delivered using Internet protocol (''IP''). The Commission adopts rules governing such captioning and sets out a schedule of deadlines. These requirements will apply where a video programming distributor or provider posts on its Web

site or application a video clip of video programming that it published or exhibited on television with captions on or after the applicable compliance deadline.

DATES: Effective September 4, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Video Clips Order,* FCC 14–97, adopted on July 11, 2014 and released on July 14, 2014. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http:fjallfoss,fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

I. Introduction

1. One of the Commission's priorities is to ensure that all individuals, especially individuals with disabilities, are able to enjoy the full benefits of broadband technology, including the services that broadband enables such as online video programming. Online viewing of video programming is becoming increasingly significant, and one aspect of this development is that more and more consumers are receiving news, sports, and entertainment programming in the form of online video clips. In this Second Order on Reconsideration (''*Video Clips Order*''), as part of our continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), we conclude that clips of video programming covered by the statute must be captioned when delivered using Internet protocol (''IP'') and set out a schedule of deadlines.

2. When the Commission initially adopted IP closed captioning requirements pursuant to its responsibilities under the CVAA it applied the requirements to full-length video programming and not to video clips.[1] The Commission said that it might in the future extend the IP closed captioning requirements to video clips if it found that consumers who are deaf or hard of hearing are denied access to critical areas of programming, such as news, because the programming is posted online as video clips. In response to a petition for reconsideration filed by consumer groups, and at the Commission's direction, the Media Bureau issued a public notice seeking updated information on the closed captioning of IP-delivered video clips, including the extent to which the industry has voluntarily captioned these clips.[2] After reviewing the record compiled in this proceeding, we find that a significant percentage of video clips continue to remain inaccessible to consumers who are deaf or hard of hearing. In addition, we have reconsidered the Commission's earlier interpretation of the statute and conclude that Congress intended the IP closed captioning requirements to extend to all covered video programming including clips, but left to our discretion the timeline for compliance with this requirement. Accordingly, to implement the statute fully, and in furtherance of Congress's intent to ensure that individuals who are deaf or hard of hearing have better access to online video programming, we reconsider the Commission's earlier decision and revise our regulations to require the provision of closed captioning on video clips delivered using IP when the programming was published or exhibited on television with captions. As discussed in section III below, this *Video Clips Order* imposes closed captioning requirements on IP-delivered video clips by adopting rules that will:

- Extend the IP closed captioning requirements to IP-delivered video clips if the video programming distributor or provider[3] posts on its Web site or application (''app'') a video clip of video programming that it published or exhibited on television in the United States with captions, regardless of the content or length of the video clip.
- Pursuant to our authority to establish an appropriate schedule of deadlines for purposes of the IP closed captioning requirements,[4] adopt a compliance deadline of January 1, 2016 for ''straight lift'' clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, and January 1, 2017 for ''montages,'' which contain multiple straight lift clips.
- After the applicable deadlines, require IP-delivered video clips to be provided with closed captions at the time the clips are posted online, except as otherwise provided.
- For clips of video programming previously shown live or near-live on television with captions,[5] require captions beginning July 1, 2017 and for the present time allow a grace period of 12 hours after the live programming is shown on television and eight hours after the near-live programming is shown on television before the clip must be captioned online.
- Find that compliance with the new requirements would be economically burdensome for video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips, and January 1, 2017 for montages, and thus exempt this class of video clips from coverage; and
- Generally apply the IP closed captioning requirements to video clips in the same manner that they apply to full-length video programming, which among other things means that the quality requirements applicable to full-length IP-delivered video programming will apply to video clips.

[1] *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 27 FCC Rcd 787, 816–18, para 44–48 (2012) (''*IP Closed Captioning Order*'').

[2] *Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips,* Public Notice, 28 FCC Rcd 16699 (MB, 2013) (''*Video Clips PN*'').

[3] When we use the term ''video programming distributor or provider'' herein, we invoke the definition of that term in the Commission's IP closed captioning rules, which is ''[a]ny person or entity that makes available directly to the end user video programming through a distribution method that uses Internet protocol.'' 47 CFR 79.4(a)(3).

[4] 47 U.S.C. 613(c)(2)(B).

[5] Industry refers to these video clips as ''time-sensitive''.

II. Background

3. In the *IP Closed Captioning Order,* the Commission implemented section 202 of the CVAA by imposing closed captioning requirements on the owners, providers, and distributors of IP-delivered video programming with respect to full-length video programming.[6] The Commission defined ''full-length video programming'' covered by the rules as video programming that appears on television and is distributed to end users, substantially in its entirety, via IP. By ''substantially in its entirety,'' the Commission ''mean[t] to reference video programming that is distributed via IP as a complete video programming presentation, such as an episode of a television show or movie.''[7] Accordingly, ''full-length video programming'' includes, for example, a full-length half-hour program that is missing a few minutes when it is distributed via IP, as well as a full-length program that is posted online in its entirety in multiple segments for easy viewing. The definition of ''full-length video programming'' excludes ''video clips,'' which the Commission defined as excerpts of full-length video programming.

4. Although the Commission excluded video clips in the *IP Closed Captioning Order,* it interpreted the legislative history of the CVAA as signaling Congress's intent to leave open the extent to which the IP closed captioning rules should cover video clips at some point in the future. Hence, the Commission indicated that it might in the future determine that the IP closed captioning requirements should apply to video clips if necessary to provide access to this programming. Specifically, the Commission stated, ''If we find that consumers who are deaf or hard of hearing are not getting access to critical areas of programming, such as news, because of the way the programming is posted (*e.g.,* through selected segments rather than full-length programs), we may reconsider this issue to ensure that our rules meet Congress's intent to bring captioning access to individuals viewing IP-delivered video programming.''

5. In addition, although the Commission did not require closed captioning of IP-delivered video clips, it encouraged video programming owners, providers, and distributors to provide closed captions on such content where they are able to do so. In particular, the Commission ''encourage[d] the industry to make captions available on all TV news programming that is made available online, even if it is made available through the use of video clips.''[8] The Commission also said that it might find a violation of the IP closed captioning rules if an entity exhibited a pattern of using video clips as a means of avoiding its closed captioning obligations.

6. A coalition of consumer groups filed a Petition for Reconsideration of the *IP Closed Captioning Order,* arguing, among other things, that the Commission should require captioning of IP-delivered video clips.[9] In an order responding to the Consumer Groups Petition, the Commission noted that consumers were particularly concerned about the availability of captioned news clips, which tend to be live or near-live.[10] Nevertheless, because full-length live and near-live programming became subject to the IP closed captioning requirements only about a month before Consumer Groups filed their petition, the Commission expressed its expectation that entities subject to the IP closed captioning rules would caption an increasing volume of video clips, particularly news clips, given that they would be developing more efficient processes for the captioning of live and near-live programming. The Commission further indicated that it would monitor industry actions on the captioning of IP-delivered video clips, and it directed the Media Bureau to issue a public notice to seek updated information on the topic within six months. If the record developed from the public notice ''demonstrates that consumers are denied access to critical areas of video programming due to lack of captioning of IP-delivered video clips,'' the Commission indicated that it might reconsider its decision not to subject video clips to the IP closed captioning rules.

7. At the Commission's direction, the Media Bureau issued a public notice seeking updated information on the closed captioning of IP-delivered video clips, including the extent to which industry has voluntarily captioned these clips. In the public notice, the Media Bureau asked whether the Commission should require captioning of IP-delivered video clips, and it invited comment on any issues relevant to this determination. Commenters representing both the industry and consumer groups submitted detailed filings on these issues. The record demonstrates the large volume of IP-delivered video clips currently available to consumers, culled from a multitude of full-length video programs.

III. Discussion

8. As discussed fully below, we hereby reconsider our prior decision and conclude that the CVAA covers video clips as well as full-length video programming shown online. Accordingly, at this time we apply the IP closed captioning requirements to video clips if the video programming distributor or provider posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions. Specifically, for ''straight-lift'' clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, the IP closed captioning requirements will apply beginning January 1, 2016. For ''montage'' clips, a single file containing multiple straight lift clips, we adopt an extended compliance deadline of January 1, 2017.[11] We find that it would

[6] When we use the term ''video programming owner'' herein, we invoke the definition of that term in the Commission's IP closed captioning rules, which is the person or entity that either (i) licenses the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol; or (ii) acts as the video programming distributor or provider, and also possesses the right to license the video programming to a video programming distributor or provider that makes the video programming available directly to the end user through a distribution method that uses Internet protocol. 47 CFR 79.4(a)(4).

[7] *IP Closed Captioning Order,* 27 FCC Rcd at 816, para. 44.

[8] *Id.* at 818, para. 48.

[9] Consumer Groups, Petition for Reconsideration of the Commission's Report and Order, at iii, 1–17 (filed Apr. 27, 2012) (''Consumer Groups Petition''). We use the term ''Consumer Groups'' to reference the signatories of the Consumer Groups Petition or a subset thereof: Telecommunications for the Deaf and Hard of Hearing, Inc.; National Association of the Deaf; Deaf and Hard of Hearing Consumer Advocacy Network; Association of Late-Deafened Adults; Hearing Loss Association of America; Cerebral Palsy and Deaf Organization; and Technology Access Program at Gallaudet University. The Consumer Groups' petition for reconsideration was published in the Proposed Rules section of the **Federal Register**. *See Petitions for Reconsideration of Action in Rulemaking Proceeding,* MB Docket No. 11–154; Rpt No. 2951, 77 FR 30,485, May 23, 2012.

[10] *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Order on Reconsideration and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8785, 8804, para. 30 (2013).

[11] We distinguish here between a single file containing multiple straight lift clips and situations where one or more single files are played sequentially, such as through a playlist. For example, a video programming distributor might automatically begin playing a related video file immediately after the initial video retrieved by the consumer concludes, such as another news clip about the same topic or another highlight from the same sporting event. That would not be an example of a montage, but rather, would be straight lift clips that are played in sequence.

be economically burdensome to apply the new requirements to video clips that are in the video programming distributor's or provider's library before the relevant compliance deadline, and accordingly we exempt such video clips from coverage.[12] Further, we will require captioning for video clips of live and near-live programming beginning July 1, 2017, and we will permit such clips to be posted online initially without captions, but require that captions be added to clips of live programming within 12 hours and to clips of near-live programming within eight hours after the conclusion of the television display of the associated video programming [13] that contained the clip.[14] Finally, we generally apply the Commission's IP closed captioning rules for full-length programming, including the quality requirements, to video clips.[15] Below, before addressing the substance of our video clips requirements, we first discuss threshold issues regarding legal authority and procedure, as well as the benefits of requiring closed captioning for IP-delivered video clips. As discussed fully below, we hereby reconsider our prior decision and conclude that the CVAA covers video clips as well as full-length video programming shown online. Accordingly, at this time we apply the IP closed captioning requirements to video clips if the video programming distributor or provider posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions. Specifically, for ''straight-lift'' clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, the IP closed captioning requirements will apply beginning January 1, 2016. For ''montage'' clips, a single file containing multiple straight lift clips, we adopt an extended compliance deadline of January 1, 2017.[16] We find that it would be economically burdensome to apply the new requirements to video clips that are in the video programming distributor's or provider's library before the relevant compliance deadline, and accordingly we exempt such video clips from coverage.[17] Further, we will require captioning for video clips of live and near-live programming beginning July 1, 2017, and we will permit such clips to be posted online initially without captions, but require that captions be added to clips of live programming within 12 hours and to clips of near-live programming within eight hours after the conclusion of the television display of the associated video programming [18] that contained the clip.[19] Finally, we generally apply the Commission's IP closed captioning rules for full-length programming, including the quality requirements, to video clips.[20] Below, before addressing the substance of our video clips requirements, we first discuss threshold issues regarding legal authority and procedure, as well as the benefits of requiring closed captioning for IP-delivered video clips.

A. Threshold Issues Regarding Legal Authority and Procedure

9. We find that the CVAA mandates that all ''video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations,'' including clips of that programming, be provided with closed captioning.[21] The statutory text, quoted above, does not distinguish between full-length video programming and video clips; therefore, as explained below, we believe the statute is most reasonably interpreted as covering excerpts of full-length programming as well as complete and substantially complete programs. To the extent the *IP Closed Captioning Order* stated that the CVAA's captioning provisions did not cover clips of video programming or did not cover them until some future date, we reconsider and reject that statutory interpretation. Rather, we find that video clips are included within the definition of video programming, and thus the statute mandates that clips of video programming covered by the statutory definition be captioned when delivered by IP.

10. Clips of programming *shown on television* meet the statute's definition of ''video programming,'' which is ''programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 153 of this title).'' [22] As we stated in the *IP Closed Captioning Order,* ''programming 'that was published or exhibited on television' by definition constitutes 'video programming,' since anything that was published or exhibited on television must be provided by, or be comparable to programming provided by, a television broadcast station.'' There is nothing in the definition of ''video programming'' that expressly excludes video clips or

[12] As in the *IP Closed Captioning Order,* herein we use the term ''library'' to describe the collection of content a video programming provider or distributor makes available to consumers online. In the *Further Notice,* we seek comment on application of the IP closed captioning requirements to video clips that are added to the video programming distributor's or provider's library after the relevant compliance deadline but before the programming is shown on television with captions (''advance'' video clips).

[13] When we use the term ''associated video programming'' or ''associated video program,'' we mean the televised programming from which the video clip was excerpted.

[14] Throughout this item, when we discuss grace periods of a certain number of hours after the programming is shown on television with captions within which video clips must be captioned online, we will consider the grace period to begin upon the conclusion of the television display of the associated video program. Given the current state of captioning technology, waiting until the conclusion of the program is the most reasonable approach at this juncture since, at that time, the caption file is complete.

[15] We also adopt a *Further Notice* considering four specific issues. Among the issues considered in the *Further Notice* is application of the IP closed captioning requirements to ''mash-ups,'' which occur when a single file contains a compilation of one or more video clips that have been shown on television with captions along with additional content that has not been shown on television with captions. We thus defer, at this time, application of our rules with respect to mash-ups.

[16] We distinguish here between a single file containing multiple straight lift clips and situations where one or more single files are played sequentially, such as through a playlist. For example, a video programming distributor might automatically begin playing a related video file immediately after the initial video retrieved by the consumer concludes, such as another news clip about the same topic or another highlight from the same sporting event. That would not be an example of a montage, but rather, would be straight lift clips that are played in sequence.

[17] As in the *IP Closed Captioning Order,* herein we use the term ''library'' to describe the collection of content a video programming provider or distributor makes available to consumers online. In the *Further Notice* below, we seek comment on application of the IP closed captioning requirements to video clips that are added to the video programming distributor's or provider's library after the relevant compliance deadline but before the programming is shown on television with captions (''advance'' video clips).

[18] When we use the term ''associated video programming'' or ''associated video program,'' we mean the televised programming from which the video clip was excerpted.

[19] Throughout this item, when we discuss grace periods of a certain number of hours after the programming is shown on television with captions within which video clips must be captioned online, we will consider the grace period to begin upon the conclusion of the television display of the associated video program. Given the current state of captioning technology, waiting until the conclusion of the program is the most reasonable approach at this juncture since, at that time, the caption file is complete.

[20] We also adopt a *Further Notice* considering the four specific issues listed above. Among the issues considered in the *Further Notice* is application of the IP closed captioning requirements to ''mash-ups,'' which occur when a single file contains a compilation of one or more video clips that have been shown on television with captions along with additional content that has not been shown on television with captions. We thus defer, at this time, application of our rules with respect to mash-ups.

[21] 47 U.S.C. 613(c)(2)(A).

[22] *Id.* 613(h)(2).

excerpts of programming. Indeed, only one category of programming is expressly excluded from the definition and that is ''consumer-generated media,'' a category not relevant for purposes here. The CVAA does not further explain what is meant by programming that is ''generally considered comparable to programming provided by a television broadcast station.'' However, nothing in the statutory text suggests an excerpt of programming may not be considered ''comparable'' to broadcast programming under section 202.[23] To the contrary, section 202 instructs us to take into account, in establishing compliance deadlines, whether the programming is ''edited for Internet distribution,'' indicating that Congress contemplated that the version of a television program provided online may differ, and in fact, be provided in truncated form, from the original airing shown on television. We therefore reject the argument that the term ''video programming'' does not encompass video clips on the theory that ''television broadcasters and multi-channel video programming distributors do not transmit free-standing clips.''[24] For the reasons stated herein, we believe the better reading of the statute is that clips of video programming are covered by section 202.

11. We also reject the contention that the legislative history of the CVAA compels us to interpret section 202 to exclude video clips from the IP closed captioning requirements. The Senate and House Committee Reports state that Congress ''intends, at this time, for the regulations to apply to full-length programming and not to video clips or outtakes.'' On reconsideration, we reject the Commission's statements in the *IP Closed Captioning Order* suggesting that this legislative history indicated Congress's intent to authorize the Commission to adopt rules requiring closed captioning of IP-delivered video clips at some future time.[25] After examining this issue in more detail, we believe the better reading of this language is that Congress intended that the statutory captioning requirements cover video clips, but gave the Commission discretion to defer the compliance deadline for video clips when the Commission set the schedule of compliance deadlines under section 202. This interpretation is consistent with the statute, which gives the Commission considerable discretion in establishing ''an appropriate schedule of deadlines for the provision of closed captioning'' and directs the Commission to consider factors that may affect compliance.[26] If Congress had intended to exclude excerpts from the scope of section 202, we would expect it to have expressly done so in the statute, as it did with respect to ''consumer-generated media.''[27] Similarly, if Congress had intended to delay to some future date Commission authority to adopt rules for video clips, we would expect it to have included such a limitation in the statute. For these reasons, we believe our reading of the legislative history on reconsideration is most consistent with the statutory language. As discussed below, we now set phased-in compliance deadlines for captioning of IP-delivered video clips that fall within the definition of video programming (''programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 153 of this title)'').[28]

12. Commenters who argue that Congress did not intend the Commission to apply the IP closed captioning regulations to video clips ignore the statutory language. For example, the Digital Media Association (''DiMA'') disagrees with the Commission's interpretation of ''at this time'' in the legislative history, and asserts instead that the phrase actually means that video clips are not covered ''under this statute.''[29] To the contrary, had Congress intended to carve out video clips from coverage of video programming, it could have said so clearly, rather than using the phrase ''at this time,'' which suggests merely a temporal meaning. If the reports had said that Congress ''intends for the regulations to apply to full-length programming and not to video clips,'' that would suggest that Congress understood video clips not to be covered by the statutory language. But the use of the phrase ''at this time'' suggests that the Commission's regulations could require captioning in the future. That could only happen if video clips fall within the ambit of ''video programming.'' Further, applying the IP closed captioning requirements to video clips is consistent with both the text and stated purpose of the CVAA, which was ''to help ensure that individuals with disabilities are able to fully utilize communications services and better access video programming.''[30] Requiring closed captioning of IP-delivered video clips will help ensure that individuals who are deaf or hard of hearing will have access to all covered video programming. And, as discussed above, the temporal reference in the legislative

[23] A similar definition of ''video programming'' appears in other provisions of the Communications Act of 1934, as amended (the ''Act''). *See, e.g.,* 47 U.S.C. 522(20) (''video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station''). We note the Commission has not construed that term in other contexts to exclude excerpts or clips from the definition. *See, e.g., Closed Captioning and Video Description of Video Programming,* Report and Order, 13 FCC Rcd 3272 (1997) (''*1997 Closed Captioning Order*'') (implementing the requirement of Section 713 of the Act that video programming be closed captioned on television); *Closed Captioning of Video Programming,* Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014) (adopting captioning quality standards and technical compliance rules for video programming).

[24] *See* DiMA Comments at 3; *see also* NCTA Reply at 3. DiMA asserts that ''a 2-minute clip from 'The Late Show with David Letterman' is not 'comparable to' a full-length television show any more than 2-pages from a compilation of the Communications Act is 'comparable to' the full text of the statute.'' DiMA Mar. 20 *Ex Parte* Letter at 1. We disagree, and conclude instead that a portion of a program that was shown on television with captions is no less ''comparable to programming provided by a television broadcast station'' than the complete program itself. Contrary to DiMA's interpretation, the CVAA is not limited to programming comparable to *full-length* programming provided by a television broadcast station. *See also* Reply Comments of the Association of Public Television Stations and the Public Broadcasting Service at 3 (''PTV Reply'') (arguing that the dictionary meaning of ''programming'' and ''program'' implies that ''programs'' subject to the CVAA's IP closed captioning requirements are full-length shows and not video clips). We disagree with PTV's approach because, as explained above, we find it consistent with the statutory text to conclude that ''video programming'' encompasses video clips.

[25] We are unpersuaded by Consumer Groups' argument that the legislative history's reference to ''video clips'' meant to refer to material that is exempt from the television closed captioning rules. Consumer Groups Mar. 28 *Ex Parte* Letter at 2. The television closed captioning rules exempt ''[i]nterstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.'' 47 CFR 79.1(d)(6). Had Congress merely meant to carry over this exemption to IP-delivered programming, it would have cited that rule or used similar language. This exemption does not use the term ''video clips.''

[26] 47 U.S.C. 613(c)(2)(B).

[27] *See id.* 613(h)(2).

[28] *Id.* 613(h)(2).

[29] According to DiMA, the reference to outtakes in the legislative history supports its interpretation because it argues outtakes are never shown on television, and thus it cannot be that Congress intended the Commission to reconsider covering outtakes at some point in the future. Neither the statute nor the legislative history indicates what the Congressional reports mean by use of the term ''outtakes.'' For purposes of the IP captioning rules the Commission defined ''outtakes'' not covered by the rules as ''[c]ontent that is not used in an edited version of video programming shown on television.'' 47 CFR 79.4(a)(2), (13). Thus, outtakes that have never been shown on television need not be captioned when provided online. To the extent content that could be described in common parlance as ''outtakes'' does appear on television with captions, however, it must be captioned when provided online.

[30] Senate Committee Report at 1; House Committee Report at 19.

history is consistent with the text of the statute, which gives the Commission discretion to adopt an appropriate schedule of compliance deadlines taking into consideration factors that may warrant a longer compliance period.

13. Further, we conclude that it is procedurally appropriate for us to act on this issue now. We disagree with those commenters who suggest that the Consumer Groups Petition was procedurally defective under section 1.429(b) of the Commission's rules. Consumer Groups argued earlier in the proceeding that video clips (as the Commission has defined the term) [31] should be subject to the IP closed captioning rules, and Consumer Groups requested reconsideration, arguing that the Commission wrongly decided the issue. We find that the Consumer Groups Petition does not rely entirely on arguments that the Commission already considered and rejected because it explicitly describes how the video clips exemption is denying consumers who are deaf or hard of hearing access to critical areas of programming, and it presents more up-to-date information than that available at the time the Commission released the *IP Closed Captioning Order.* In any event, even if the petition does rely on facts or arguments not previously presented to the Commission, grant of the petition still would be proper under our rules because of the clear public interest benefits of requiring closed captioning of IP-delivered video clips, as discussed below. The Commission's rules provide that grant of a petition for reconsideration that ''relies on facts or arguments which have not previously been presented to the Commission'' is permissible if ''[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest.'' [32] For these reasons, it is procedurally appropriate to consider the Consumer Groups Petition.

14. We do not believe that seeking further comment is necessary or appropriate before we can impose any closed captioning requirements on IP-delivered video clips. DiMA claims that the Commission should issue a notice of proposed rulemaking before imposing any closed captioning requirement on IP-delivered video clips, to provide interested parties with an opportunity to comment and to obtain feedback on specific proposed rules. We find that a further notice of proposed rulemaking is neither procedurally necessary nor useful prior to imposing the requirements we adopt in this *Video Clips Order.* This proceeding has included a petition for reconsideration filed by Consumer Groups urging the Commission to require IP-delivered video clips to be captioned.[33] Following the filing of that petition, the Commission released an order on reconsideration deferring a final ruling on the video clips issue raised in the Consumer Groups Petition and directing the Media Bureau to seek updated information on this issue. A public notice was published in the **Federal Register** seeking comment to further inform the Commission's consideration of the video clips issue and asking ''whether, as a legal and/or policy matter, the Commission should require captioning of IP-delivered video clips.'' [34] Thus, adequate notice of the proposed rules has been provided and issuing a further notice of proposed rulemaking before imposing the closed captioning requirements for IP-delivered video clips adopted herein would be redundant. Instead, we proceed to this *Video Clips Order* based on the ample record already compiled, including the additional comments filed recently in response to the public notice. In contrast, for those issues on which we do not have an adequate record for a decision, we seek further comment in the Further Notice of Proposed Rulemaking.

B. Impact of Requiring Closed Captioning of Internet Protocol-Delivered Video Clips

15. While we commend the industry for its voluntary efforts to caption IP-delivered video clips, we also recognize that many such video clips remain uncaptioned. The record demonstrates that over the past few years, industry has been exhibiting an increasing volume of online video programming in the form of video clips, and these clips are increasingly captioned. Specifically, while Consumer Groups found in May 2013 that 23 percent of news clips and 10 percent of non-news clips were captioned, the more recent data that Consumer Groups submitted in February 2014 indicates that 57 percent of news clips and 18 percent of non-news clips are captioned.[35] Nonetheless, despite this increase in captioning of IP-delivered video clips, many consumers are denied access to the large volume of clips that remain uncaptioned. A Commission requirement for captioning IP-delivered video clips will ensure that the content, including critical news programming, will be accessible to individuals who are deaf or hard of hearing, thus significantly benefiting consumers and serving the stated public interest goal of the CVAA. Such a requirement is particularly important because, as stated above, more and more consumers are receiving news, sports, and entertainment programming in the form of online video clips. Consumer Groups explain that a Commission requirement is necessary because, although some video programming providers and distributors ''have greatly increased their use of captions for video clips, many others captioned few or none of their clips.'' [36] The record demonstrates that because of the large volume of IP-delivered video programming that is posted online as video clips, much of which is not captioned, consumers who are deaf or hard of hearing are being denied access to critical areas of programming, such as news, contrary to the intent of the CVAA.[37]

[31] Consumer Groups did, however, previously support a narrow exclusion for video clips under 30 seconds in length that contain only promotional materials or advertising for full-length programming. *See* Comments of the Consumer Groups on the *NPRM* at 18–20.

[32] *See* 47 CFR 1.429(b)(3).

[33] *See Petitions for Reconsideration of Action in Rulemaking Proceeding,* MB Docket No. 11–154; Rpt No. 2951, 77 FR 30,485, May 23, 2012.

[34] *Video Clips PN,* 28 FCC Rcd 16699. The *Video Clips PN* was published in the proposed rules section of the **Federal Register**. In seeking comment on the video clips proposal, the *Video Clips PN* also referenced the Initial Regulatory Flexibility Analysis included in the *NPRM* in this proceeding, which identified small entities that might be affected. *See Media Bureau Seeks Comment on Application of the IP Closed Captioning Rules to Video Clips,* MB Docket No. 11–154; 78 FR 78,319, December 26, 2013. We received comments from both the industry and consumer groups in response to the *Video Clips PN.*

[35] We acknowledge that some errors in the Consumer Groups study detract from Consumer Groups' claims, such as the study's inclusion of some clips of programming that were not shown on television in this country with captions, its failure to consider that some closed captioning problems experienced may have resulted from the use of apparatus that were not yet required to comply with the Commission's rules governing the accessibility of video apparatus (*see* 47 CFR 79.103), and its failure to properly categorize certain material as ''clips'' that were not required to be captioned as opposed to ''segments'' for which captioning was required. Notwithstanding these shortcomings, the remaining data provided by the Consumer Groups confirms that a significant number of IP-delivered video clips today are not captioned.

[36] Consumer Groups Comments at 17.

[37] An additional benefit of requiring closed captioning of IP-delivered video clips relates to the Commission's current distinction between video clips and segments. Specifically, while the *IP Closed Captioning Order* exempted video clips from the IP closed captioning requirements, it required that IP-delivered video programming be captioned when the full-length video program is posted online in multiple segments. Today's decision to require closed captioning of IP-delivered video clips and not just segments will eliminate confusion for consumers looking for captioning and for industry seeking to comply with our requirements, since there will be no need to determine whether a particular piece of short-form content is a video clip or a segment.

16. Contrary to the suggestions of some commenters, accessing captioned full-length programming online or reading an article about the topic covered in an uncaptioned video clip is not a full substitute for viewing a captioned video clip. If such suggestions were true, the Internet would not contain the large volume of video clips that it does because access to such alternatives would adequately serve viewers who are not deaf or hard of hearing. Public Citizen states that the lack of closed captioning on IP-delivered video clips ''disadvantages and marginalizes deaf and hard of hearing people.'' We agree that the very fact that programmers make video clips available when the full-length program is also available online demonstrates the intrinsic value of these clips. For these reasons, we believe that interpreting section 202 to cover video clips is necessary to fully effectuate the statutory purpose and that it is appropriate to require compliance with the statute under the schedule we adopt in this order.

17. As explained above, we interpret the statute as requiring closed captioning of IP-delivered video clips and we find that there are obvious public interest benefits of imposing such a requirement. Industry commenters assert, however, that they will face some financial and technical challenges in complying with such a requirement. One of the biggest challenges, they claim, is ensuring that the captions are properly synchronized. Synchronization is of particular concern because if captions lag behind the audio, which often occurs during live programming, part of the applicable captions may be missing when a clip is excerpted from the programming. As a result, some industry commenters indicate that they must re-author the caption file for video clips. Some industry commenters assert that captioning online clips is time-consuming, labor-intensive, and costly, particularly given the enormous volume of IP-delivered video clips. While future technological developments will likely automate the process, they report that the development of this technology remains ongoing. Industry commenters also caution that a requirement to caption video clips might cause some entities to cease posting video clips online. Contrary to the industry's claims about the time-consuming nature of captioning video clips, however, one captioning company, VITAC, indicates that it captions over 50 short-form videos (30–60 seconds each) per day for one client, and that captioners create the captions for each of these videos within 15–20 minutes of receiving them.

18. Based on the record before us, we find that compliance with a captioning requirement for IP-delivered video clips will not be overly burdensome. This is particularly true given the reasonable timeframes we are providing for entities to come into compliance, as well as the grace period within which captions may be added to video clips of live and near-live programming. Further, consistent with the text of the CVAA, the scope of the IP closed captioning requirements is limited to video programming ''that was published or exhibited on television with captions,'' [38] such that online captions only will be required for content that already has been televised with captions. The fact that some video programming distributors already caption a portion of their video clips demonstrates that the necessary technology exists and that captioning video clips is economically feasible. We expect that the lengthy compliance deadlines of January 1, 2016 for straight lift clips and January 1, 2017 for montages will alleviate the asserted difficulties with captioning IP-delivered video clips, particularly given information provided on the record by captioners and others indicating that solutions already exist to facilitate captioning of IP-delivered video clips.

C. Closed Captioning Requirements for Internet Protocol-Delivered Video Clips

1. Covered Video Clips

19. The CVAA directs the Commission to require closed captioning of IP-delivered video programming when the programming ''was published or exhibited on television with captions after the effective date of [the] regulations.'' [39] Accordingly, while the closed captioning requirements for IP-delivered video clips will apply to clips of video programming that was shown on television with captions, they will not apply to clips of video programming that was not shown on television with captions.[40] To the extent that a video clip posted online contains an audio track that is substantially different from that aired on television, we will not consider the video clip to have been shown on television with captions and thus captions will not be required online. For example, we understand that sometimes a video clip from a sporting event is later posted online with different audio than the audio that accompanied the same video on television. The online version of the video clip with different audio would not be covered by the CVAA because the video programming at issue was not shown on television with captions; rather, where the audio is substantially different, the televised captions would not correspond to the audio that accompanies the online clip.

20. We interpret the CVAA to require closed captioning of IP-delivered video clips regardless of the content or length of the clip.[41] Some commenters have argued that we should apply the closed captioning requirements only to clips with certain content or only to clips above a certain length. We disagree. Rather, we find that it was Congress's intent in enacting the CVAA to ensure that consumers who are deaf or hard of hearing have access to video programming that is shown on television with captions, including video programming posted online as video clips, regardless of whether the video clips contain news, sports, entertainment, or any other type of content. A finding to the contrary is not supported by the CVAA's overarching goal to provide full programming access to individuals who are deaf or hard of hearing. Similarly, we do not limit the applicability of the closed captioning requirements only to clips of a certain length. We find no basis on which to distinguish between clips that last 10 seconds and those that last 10 minutes. By deciding to make a clip available via the Internet, a video programming distributor or provider has made a decision that it has value for the general public, and the CVAA requires that when the same programming was shown on television with captions, the clip must also be made accessible online to consumers who are deaf or hard of hearing. This comprehensive approach will be more administratively efficient for industry because companies will not need to determine whether clips contain certain content or are of a certain minimum length.

21. At the present time, the closed captioning requirements for IP-delivered video clips will apply if the video programming provider or distributor (as those terms are defined in the IP closed captioning rules) posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United

[38] 47 U.S.C. 613(c)(2)(A).

[39] 47 U.S.C. 613(c)(2)(A).

[40] We clarify, however, that the addition of a brief introduction or advertisement to an otherwise covered video clip will not exempt the clip from the IP closed captioning rules.

[41] Except as otherwise provided herein, as with IP closed captioning of full-length video programming, once the captioning requirement is triggered we will expect captions to be available immediately for IP-delivered video clips.

States with captions on or after the applicable compliance deadline. NAB and the National Cable and Telecommunications Association (''NCTA'') propose that the requirements for closed captioning IP-delivered video clips only apply to a person or entity that (a) exhibits the television program with captions on its linear channel or network; (b) has the rights to exhibit a clip of that program with captions via IP; and (c) makes the clip available via a Web site or app operated solely by the person or entity.[42] NAB and NCTA are concerned that a broader application of the IP closed captioning rules to video clips may hold entities responsible for issues that they do not control. In recognition of these concerns, we will limit the current application of the rules as described above. For example, if XYZ Network posts a video clip on a Web site or app that it operates, and the video clip is from programming that appeared on XYZ Network with captions after the compliance date, then the IP closed captioning requirements would apply. If, however, XYZ Network posts the video clip on a third party Web site, then the IP closed captioning requirements would not apply. We defer application of the IP closed captioning rules with respect to the provision of video clips by third party video programming providers and distributors, such as Hulu, or other services that may embed or host video programming, such as news Web sites, pending action on the *Further Notice.*

2. Compliance Deadline

22. At the outset, we clarify that there are several types of video clips at issue. First, the industry uses the term ''straight lift'' clips to reference a single excerpt of a captioned television program with the same video and audio that was presented on television. Such video clips will be subject to the January 1, 2016 deadline discussed below. Second, the industry uses the term ''montage'' to reference a single file that contains multiple straight lift clips, and as explained below, the industry has persuasively argued that compliance may be more difficult with regard to such clips. Accordingly, montages will be subject to an extended deadline of January 1, 2017. Third, the industry uses the term ''mash-up'' to reference a single file that contains a compilation of one or more video clips that have been shown on television with captions and additional content that has not been shown on television with captions. For the reasons discussed in the *Further Notice,* we seek further comment on the proper treatment of this category of video clips in the *Further Notice.* With respect to closed captioning of IP-delivered video clips of video programming shown live or near-live on television, we require captions beginning July 1, 2017. At the same time, due to the time-sensitive nature of the posting of a live or near-live video clip we grant a grace period that requires that captions be added to clips of live programming within 12 hours and to clips of near-live programming within eight hours after the associated video programming is published or exhibited on television in the United States with captions. As discussed below, the later deadlines for montages and video clips taken from associated live and near-live television programming provide additional time because of the challenges associated with captioning these types of clips, and to allow for the development of technological advances that will facilitate a streamlined process for posting these clips with captions online. If we receive a petition seeking to extend these deadlines and find that technology has not progressed as expected with respect to posting these clips online, we will act promptly on the petition and extend the compliance deadlines if the petition demonstrates that technology is not available to achieve compliance.

23. As stated above, we will require compliance with the new requirements for closed captioning of IP-delivered video clips by January 1, 2016 for ''straight lift'' video clips. We define ''straight lift'' video clips as those that contain a single excerpt of a captioned television program with the same video and audio that was presented on television. As of that date, IP-delivered video clips must be provided with closed captions if the associated video programming is published or exhibited on television in the United States with captions on or after January 1, 2016. Consumer Groups and captioning companies support a one-year deadline. In contrast, some members of the industry have requested a two-year phase-in because of the volume of video clips and the difficulty in captioning them,[43] while others have supported a deadline of 18 months after adoption of the rules. Members of the industry have cautioned that they may have compliance difficulties if faced with a requirement for captioning IP-delivered video clips at this juncture, when they are still working to implement the IP closed captioning requirements for full-length video programming. Balancing consumers' desire for prompt access to this content and the industry's claims about the difficulty with compliance, we adopt a deadline of January 1, 2016 for closed captioning of IP-delivered ''straight lift'' video clips. The first compliance deadline for closed captioning of full-length IP-delivered video programming was six months after the date the *IP Closed Captioning Order* was published in the **Federal Register**, as supported by the Video Programming Accessibility Advisory Committee (''VPAAC''), which consisted of representatives from both the industry and from consumer groups. Given that in general the same requirements that apply to captioning a full-length IP-delivered video program will apply to captioning an IP-delivered video clip, and that the industry has now had nearly two years of experience with captioning programming online, we find that the January 1, 2016 deadline will be sufficient for the industry to achieve compliance. During this time, we encourage the industry to work toward automating closed captioning of IP-delivered video clips and to eliminate problems associated with distorting closed caption files that may occur when video clips are created, thus reducing the labor and costs involved.

24. We find that an extended compliance deadline of January 1, 2017 is justified for ''montages.'' We define a montage as programming contained in a single file that includes multiple straight lift clips.[44] That is, a montage is a single online file containing multiple video clips ''taken from different parts of a captioned full-length TV program or from different captioned TV programs.''[45] The record demonstrates that an extended compliance deadline is needed for such programming because industry is concerned that technology

[42] NAB and NCTA have not explained the meaning or relevance of some terms in their proposal. Specifically, we are unclear what they mean by ''linear'' channel or network and by ''rights to exhibit.'' Accordingly, we believe our formulation stated above better captures the universe of covered entities.

[43] In the absence of record information on the NCTA proposal, including for example the volume of clips that do not include time-coded captions (that is, captions which directly reference the pieces of video they describe), the difficulties with captioning clips that do not include time-coded captions, and why solutions to such difficulties cannot be implemented prior to the compliance deadline, we decline to adopt a distinction between video clips that include embedded or time-coded captions and those that do not.

[44] These multiple straight lift clips may be sequential (*i.e.,* in the same order in which they appeared on television) or non-sequential (*i.e.,* in a different order than the order in which they appeared on television).

[45] NCTA Apr. 25 *Ex Parte* Letter at 2.

does not currently exist to use the same caption files that were used on television. The record supports our expectation that by January 1, 2017, technology will be better able to automate this process, enabling the industry to modify the televised captions associated with each video clip, rather than re-authoring captions where a single file contains multiple straight lift clips.[46] Accordingly, closed captions will be required where a single IP-delivered file contains multiple straight lift clips beginning January 1, 2017, if the associated video programming is published or exhibited on television in the United States with captions on or after January 1, 2017. We expect that the industry will not use this extended compliance deadline to delay compliance with the closed captioning requirements, for example, by creating a single file that contains two video clips that otherwise would have been posted separately with captions and then claiming that it is subject to the later January 1, 2017 compliance deadline.

25. We find the addition of a brief introduction or advertisement to an otherwise covered video clip will not exempt the clip from the IP closed captioning rules, regardless of whether the video clip is a straight clip or a montage.[47] At the same time, we understand that often, a single file may contain a compilation of one or more video clips that have been shown on television with captions, interspersed with additional content that has not been shown on television with captions. The industry refers to such program files as ''mash-ups.'' We seek comment on the application of the CVAA to mash-ups in the *Further Notice.*

26. Commenters have expressed concerns about captioning IP-delivered video clips that serve a promotional purpose, but these concerns are largely focused on promotional clips that are posted online before the programming is shown on television, an issue that will be explored in the *Further Notice.*[48] A non-advance promotional video clip may be a single ''straight-lift'' excerpt of captioned televised content, in which case we see no reason that the January 1, 2016 deadline discussed above should not apply. Once the IP closed captioning requirements are triggered by the content being shown on television with captions, the CVAA does not differentiate between clips of promotional material and other types of clips, but rather, broadly requires video programming that has been shown on television with captions to be made accessible to those consumers who are deaf or hard of hearing. We see nothing in the CVAA or its legislative history that suggests Congress intended to exclude from coverage video clips that are promotional in nature. For the same reasons, a non-advance promotional video clip that contains multiple straight lift clips of video programming that has been shown on television with captions, and thus is a montage, will be subject to the January 1, 2017 deadline discussed above.

3. Video Clips of Live and Near-Live Programming

27. In general, as with IP closed captioning of full-length video programming, once the captioning requirement is triggered we will expect captions to be available immediately for IP-delivered video clips. In other words, at the time of being posted online, covered video clips must be closed captioned. While Hulu has indicated that a ''grace period'' may be necessary in some instances if technical, editorial, or administrative issues arise, we expect industry to work prior to the compliance deadline to develop processes that will enable them to make captions available for IP-delivered video clips without any delay once the video programming has been shown on television with captions. The record does not support a contrary approach, with an exception for video clips of live or near-live programming.

28. We find that there are unique concerns with IP-delivered video clips of live and near-live programming given its time sensitivity. If distributors were prohibited from posting video clips of live and near-live programming[49] online until captions are available, then all consumers would be denied access to potentially time-sensitive information during that time. A grace period would provide distributors with flexibility to post time-sensitive clips online without delay. CBS requests a ''grace period of several hours'' before we require video clips of live or near-live programming to be captioned online, explaining that otherwise entities other than the authorized video programming providers and distributors may be the first to distribute the content online. CBS explains that ''[t]his is not important simply to help build a programmer's solid 'first-to-the-news' reputation, but it is also important from an accessibility perspective. If a clip goes viral and generates a large number of views over time, it is important that it be a version controlled by the station, which can augment the clip with online captions once they are generated.'' In contrast, NAB and NCTA acknowledge the feasibility of a 12-hour grace period, while DIRECTV requests a 24-hour grace period. Further, DiMA indicates that it is more difficult to caption video clips of live programming than to caption video clips of prerecorded programming.

29. Given the above difficulties associated with captioning video clips of live and near-live programming, we will not require compliance for this category of video clips until July 1, 2017.[50] Additionally, for the present time, we will permit closed captions to be provided on IP-delivered video clips of live programming up to 12 hours after the associated video programming is published or exhibited on television in the United States with captions, and we will permit closed captions to be provided on IP-delivered video clips of near-live programming up to eight hours after the associated video programming is published or exhibited on television in the United States with captions.[51]

[46] If industry finds that sufficient automation does not exist by the deadline, it may file a request to extend the deadline.

[47] Of course, a brief introduction that was not captioned on television would not be required to be captioned when accompanying an IP-delivered video clip. Only the portion of the video clip that was televised with captions would need to be captioned online.

[48] We note that at this time, any difficulty with tracking down video clips will be minimized by the fact that application of the requirement to caption advance clips is under consideration in the *Further Notice,* and because the requirement currently only applies where the video programming provider or distributor posts on its Web site or app a video clip of video programming that it published or exhibited on television.

[49] ''Live programming'' is ''[v]ideo programming that is shown on television substantially simultaneously with its performance.'' 47 CFR 79.4(a)(7). ''Near-live programming'' is ''[v]ideo programming that is performed and recorded less than 24 hours prior to the time it was first aired on television.'' 47 CFR 79.4(a)(8).

[50] Consumer Groups argue that we should consider a more limited category of video clips than clips of live and ''near live'' programming, and ''that the industry should bear the onus of articulating a workable definition that encompasses only *truly* time-sensitive' clips. . . .'' We disagree, and find instead that industry's concerns about captioning this category of video clips apply broadly to video clips of live and near-live programming. Additionally, attempting to define this category based on video clips with content that has the potential to ''go viral,'' as Consumer Groups suggest, would be inherently subjective and inevitably reflect the perspective and values of the person evaluating the content.

[51] We reiterate that we will consider the grace period to begin upon the conclusion of the television display of the associated video program. In addition, while NAB and NCTA have requested that we limit the 12-hour grace period to business hours, we decline to do so because many programs are captioned around the clock, and a 12-hour grace period will allow daytime staff to assist with captioning of video clips posted online overnight. The 12-hour grace period for video clips of live programming will address DIRECTV's concerns with what we refer to as ''NFL Highlight Clips'' and ''Short Cuts.'' When a viewer is watching one

This means that unlike other IP-delivered video clips, video clips of live and near-live programming may be posted online without captions initially, with captions added within 12 hours (for live) or eight hours (for near-live) of the video programming being shown on television.[52] We find that the 12- and eight-hour grace periods appropriately balance industry's concern with captioning time-sensitive IP-delivered video clips, with the fact that it is just as important for individuals who are deaf or hard of hearing to have access to these clips as it is for other members of the general public. One company has indicated that a grace period of ''several hours'' is workable. We find that 12 and eight hours are reasonable timeframes for all companies subject to the requirement to follow beginning July 1, 2017. To the extent that a video programming provider or distributor is unable to post video clips of live programming within these grace periods by July 1, 2017 because, for example, it lacks the resources to do so, it may petition for an exemption of this requirement.[53] We find that a shorter grace period is appropriate for video clips of near-live programming than for video clips of live programming, because we find that there is more time to add captions to an IP-delivered video clip of programming that is produced and recorded even a short time before it is shown on television with captions. In addition, we encourage the industry to make video clips of live and near-live programming available with captions at the time the clips are posted online, or as soon as possible thereafter, whenever possible, especially if such captioning already is being done. In the future, we intend to decrease or eliminate this grace period for video clips of live and near-live programming, because we expect that technology will automate the process such that a grace period for captioning is no longer needed. Accordingly, in the *Further Notice* we seek comment on the timeframe within which we should decrease or eliminate the grace period applicable to video clips of live and near-live programming.

4. Video Clips in the Online Library Before the Compliance Deadline

30. We recognize that some video programming providers and distributors will have a large number of video clips in their online library[54] before the compliance deadline of January 1, 2016 for straight lift clips and January 1, 2017 for montages. As explained fully below, we find that compliance with the closed captioning requirements for IP-delivered video clips would be economically burdensome for this class of video clips, and accordingly we exempt this class from coverage of our rules.[55]

31. The CVAA permits the Commission to exempt from coverage of its IP closed captioning rules ''any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment.''[56] The Commission has interpreted the comparable statutory provision applicable to television closed captioning.[57]

32. On balance, we find that the costs of captioning video clips that are in the video programming distributor's or provider's online library before the compliance deadline (January 1, 2016 for straight lift clips and January 1, 2017 for montages) outweigh the benefits to be derived from captioning such programming at this time. Some video programming distributors may have hundreds of thousands or even millions of video clips currently in the libraries on their Web sites or apps. Some commenters have suggested that the industry would face significant difficulty complying with closed captioning requirements for this category of IP-delivered video clips. Stated challenges with captioning this category of IP-delivered video clips include the enormous volume of existing video clips in some video programming provider and distributor's online libraries, which have been posted over a period of years, and difficulty determining potentially years after the clips were first posted online whether such clips originated as part of a program that later appeared on television with captions after the effective date of the video clip captioning rules. We are concerned about the impact that requiring closed captioning for this class of video clips may have on entities subject to the rules, including smaller entities that may lack the financial resources to comply. In contrast, we find that the benefits of requiring captioning of these clips may be minimal since video clips may ''have a shorter shelf life for viewership than long-form content.''[58]

National Football League (''NFL'') game on a mobile device, he or she may opt to view NFL Highlight Clips from another game. Short Cuts are commercial-free replay compilations of highlights from every NFL regular season game, allowing subscribers to view a game in 30 minutes or less by removing all broadcast ''down time,'' such as huddles, time-outs, and instant replay review. DIRECTV expresses concerns about captioning IP-delivered NFL Highlight Clips and Short Cuts. Specifically, DIRECTV explains that the volume of NFL Highlight Clips and the speed at which they are created and distributed makes DIRECTV unable to provide them with ''intelligible captioning.'' For both Short Cuts and NFL Highlight Clips, DIRECTV states that ''[t]he process of breaking the game feed into such video clip highlights can cause the captioning to become garbled and unrecognizable'' and that the process of recreating or restoring the captions ''would introduce delays that would substantially undermine the business rationale for these time-sensitive products.'' The rules for video clips of live programming will apply to NFL Highlight Clips and thus will address DIRECTV's concerns. The rules for video clips of live programming also will apply to Short Cuts to the extent Short Cuts are not televised with captions. We understand that a version of Short Cuts is made available on television without captions, and DIRECTV states that ''[t]he television version of Short Cuts is exempt from the captioning requirement due to the very limited gross revenues associated with this service.'' We take no position in this *Video Clips Order* as to whether a television closed captioning exemption in fact applies to Short Cuts. We clarify, however, that if the televised version of Short Cuts is captioned when shown on television in the future, then the online version will be subject to the IP closed captioning rules already applicable to full-length programming to the extent that they are in essence the same program. *See* 47 CFR 79.4(b). In other words, once Short Cuts become subject to the IP closed captioning requirements for full-length programming (*i.e.,* they are televised with captions), the extended compliance deadline and grace period applicable to video clips of live programming will no longer apply.

[52] To the extent that a straight lift clip contains video clips of live or near-live programming, it will be subject to the later July 1, 2017 compliance deadline and may utilize the 12-hour or eight-hour grace period. To the extent that a montage contains video clips of live or near-live programming, the portions of the montage that contain such programming will be subject to the later July 1, 2017 compliance deadline, and those portions may utilize the applicable grace period.

[53] *See* 47 CFR 79.4(d) (setting forth procedures for individual exemptions based on economic burden).

[54] As in the *IP Closed Captioning Order,* herein we use the term ''library'' to describe the collection of content a video programming provider or distributor makes available to consumers online.

[55] Separately, in the *Further Notice* below, we seek comment on application of the IP closed captioning rules to video clips that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions. We refer to such video clips as ''advance'' video clips, and we find that further information on the technological challenges of captioning advance video clips would be useful before we resolve this issue.

[56] 47 U.S.C. 613(c)(2)(D)(ii).

[57] *1997 Closed Captioning Order,* 13 FCC Rcd at 3342, paras.143–145. The Commission assesses economic burden more broadly in the context of an entire class than it does in the context of an individual exemption petition. *See Anglers for Christ Ministries, Inc.,* Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14958–60, paras. 33–36 (2011).

[58] *See* Hulu Apr. 1 *Ex Parte* Letter at 3; NAB June 9 *Ex Parte* Letter at 2. We recognize Consumer Groups' argument that many video clips ''are likely to live on the Internet indefinitely,'' and while that may be true for some video clips, we expect that many of the video clips that will be online prior to the compliance deadlines will be of lesser interest

Continued

We believe that the resources of the entities subject to the rules thus would be better spent captioning clips added to their libraries on a prospective basis. Accordingly, we find that it would be an economic burden to require closed captioning of video clips that are in the video programming distributor's or provider's online library before the compliance deadline with minimal benefits, and we thus exempt this class from coverage of our IP closed captioning rules.

5. Application of General IP Closed Captioning Rules to Video Clips

33. Except as otherwise discussed above, the IP closed captioning requirements will apply to video clips in the same manner that they apply to full-length video programming shown online. For example, entities may file a petition for exemption from the IP closed captioning rules based on economic burden.[59] Additionally, this means that video programming owners must provide captions of at least the same quality as the televised captions for the same programming, and video programming distributors and providers must maintain the quality of the captions provided by the video programming owner. Consumer Groups support the application of existing quality requirements for full-length IP-delivered video programming to IP-delivered video clips. The Commission previously stated that an evaluation of whether IP-delivered captions are of at least the same quality as the televised captions may involve the consideration of ''such factors as completeness, placement, accuracy, and timing.'' [60] Along these lines, the Commission recently adopted new requirements governing the quality of television closed captioning that incorporate these factors. Thus, while some commenters have asserted that there are problems with the quality of the captioning of IP-delivered video clips, it is likely that the Commission's new rules governing captioning quality on television will improve the quality of closed captioning on programming delivered via IP as well. For example, when a televised program is in compliance with the new requirement that captions be accurate and complete, then all of the audio accompanying a particular clip of the television program also must be captioned. In recognition of the fact that video clips may in some instances have to be recaptioned, however, we will permit *de minimis* differences between the closed captions accompanying an IP-delivered video clip and the closed captions that appeared on television.[61] We recognize that providing captions for video clips may present technical challenges beyond those associated with captioning full-length programs. We will take this difficulty into account in the event of complaints.[62] It is our hope, however, that advancements in technology by the time the compliance deadlines arrive may substantially ameliorate these challenges. The Commission, through its Consumer and Governmental Affairs Bureau, will work to resolve any informal complaints of noncompliance with the new requirements to caption video clips, but would typically consider enforcement action by its Enforcement Bureau when there is a pattern or trend of possible noncompliance by a covered entity. Importantly, we note that the *IP Closed Captioning Order* makes clear that entities are not responsible for quality issues outside of their control. Thus, it is not necessary for us to adopt specific rules to address NAB's concern that problems with captions of IP-delivered video clips may result from technical problems beyond a station's control.

34. When a video programming provider or distributor provides applications or plug-ins for viewing video programming, it must comply with Section 79.103(c) of our rules, which requires the inclusion of certain consumer tools such as the ability to change caption font, size, and color. The Commission's rules refer to these consumer tools as ''technical capabilities.'' We understand that some applications include video players that display only video clips, and these players were not designed with closed captioning capability. DiMA has explained that extension of the IP closed captioning rules to video clips will require upgrades to these video players, and in some instances a single video programming distributor may need to upgrade multiple video players. DiMA asserts that it would be difficult for video programming provider- or distributor-provided applications or plug-ins that play video clips but not full-length programming to comply with Section 79.103(c) of our rules and that, in any event, the technical capabilities set forth in our rules are less useful when consumers view video clips as opposed to full-length programming. We are not persuaded by these assertions. Rather, we expect that video programming providers and distributors will be able to comply with the requirements for their applications and plug-ins that play video clips, and we agree with Consumer Groups that the Commission should not enshrine in our rules an exception based on a video programming provider or distributor's decision not to include closed captioning capability in the earlier versions of its video players. To the extent that a video programming provider or distributor determines that compliance with the IP closed captioning requirements for its application or plug-in that only plays video clips would be economically burdensome, it may file an exemption request.[63] The CVAA provides that during the pendency of a petition for exemption from the IP closed captioning rules due to economic burden, the ''provider or owner shall be exempt from the requirements. . . . The Commission shall act to grant or deny any such petition, in whole or in part, within 6 months after the Commission receives such petition, unless the Commission finds that an extension of the 6-month period is necessary to determine whether such requirements are economically burdensome.'' [64]

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended

to consumers than more recent clips that are posted online after the applicable compliance deadline.

[59] *See* 47 CFR 79.4(d) (setting forth the procedures for exemptions based on economic burden, and stating that the Commission will consider the following factors: ''(i) The nature and cost of the closed captions for the programming; (ii) The impact on the operation of the video programming provider or owner; (iii) The financial resources of the video programming provider or owner; and (iv) The type of operations of the video programming provider or owner.''). Entities also may avail themselves of the statutory requirement that a *de minimis* failure to comply with the IP closed captioning regulations will not be treated as a violation. *See* 47 U.S.C. 613(c)(2)(D)(vii).

[60] *See IP Closed Captioning Order,* 27 FCC Rcd at 812, para. 37.

[61] *See* 47 U.S.C. 613(c)(2)(D)(vii) (a *de minimis* failure to comply with the IP closed captioning regulations will not be treated as a violation). Accordingly, voice recognition technology can be used to reception video clips, but only to the extent that the quality requirements are met, with permissible *de minimis* differences between the closed captions accompanying an IP-delivered video clip and the closed captions that appeared on television. We thus decline Disney's request that we permit entities to use ''the best available voice recognition technology,'' because the record contains no evidence to suggest that ''the best available voice recognition technology'' today would produce captions that meet the captioning quality requirements.

[62] We understand that the captions for live programming may appear on-screen with a delay. In such instances, to ensure that the captions available with an IP-delivered video clip are complete, the caption file may be synchronized to the clip's audio, or the captions may continue on-screen after the clip has concluded until all of the associated captions have appeared.

[63] 47 U.S.C. 613(d)(3); 47 CFR 79.4(d).

[64] 47 U.S.C. 613(d)(3).

(''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the *Notice of Proposed Rulemaking* in this proceeding. The Federal Communications Commission (''Commission'') sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Media Bureau issued a public notice seeking comment on the closed captioning of Internet protocol-delivered video clips, and that public notice also referenced the Initial Regulatory Flexibility Analysis included in the *NPRM* in this proceeding, which identified small entities that might be affected. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

1. Need for, and Objectives of, the Second Order on Reconsideration

36. One of the Commission's priorities is to ensure that all individuals, especially individuals with disabilities, are able to enjoy the full benefits of broadband technology, including the services that broadband enables such as online video programming. Online viewing of video programming is becoming increasingly significant, and one aspect of this development is that more and more consumers are receiving news, sports, and entertainment programming in the form of online video clips. In the Second Order on Reconsideration (''*Video Clips Order*''), as part of our continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), we conclude that clips of video programming covered by the statute must be captioned when delivered using Internet protocol (''IP'') and set out a schedule of deadlines.

37. When the Commission initially adopted IP closed captioning requirements pursuant to its responsibilities under the CVAA it applied the requirements to full-length video programming and not to video clips. The Commission said that it might in the future extend the IP closed captioning requirements to video clips if it found that consumers who are deaf or hard of hearing are denied access to critical areas of programming, such as news, because the programming is posted online as video clips. In response to a petition for reconsideration filed by consumer groups, and at the Commission's direction, the Media Bureau issued a public notice seeking updated information on the closed captioning of IP-delivered video clips, including the extent to which the industry has voluntarily captioned these clips. After reviewing the record compiled in this proceeding, we find that a significant percentage of video clips continue to remain inaccessible to consumers who are deaf or hard of hearing. In addition, we have reconsidered the Commission's earlier interpretation of the statute and conclude that Congress intended the IP closed captioning requirements to extend to all covered video programming including clips, but left to our discretion the timeline for compliance with this requirement. Accordingly, to implement the statute fully, and in furtherance of Congress's intent to ensure that individuals who are deaf or hard of hearing have better access to online video programming, the *Video Clips Order* reconsiders the Commission's earlier decision and revises the Commission's regulations to require the provision of closed captioning on video clips delivered using IP when the programming was published or exhibited on television with captions. As discussed in Section III of the *Video Clips Order,* it imposes closed captioning requirements on IP-delivered video clips by adopting rules that will:

- Extend the IP closed captioning requirements to IP-delivered video clips if the video programming distributor or provider posts on its Web site or application (''app'') a video clip of video programming that it published or exhibited on television in the United States with captions, regardless of the content or length of the video clip.
- Pursuant to our authority to establish an appropriate schedule of deadlines for purposes of the IP closed captioning requirements, adopt a compliance deadline of January 1, 2016 for ''straight lift'' clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, and January 1, 2017 for ''montages,'' which contain multiple straight lift clips.
- After the applicable deadlines, require IP-delivered video clips to be provided with closed captions at the time the clips are posted online, except as otherwise provided.
- For clips of video programming previously shown live or near-live on television with captions, require captions beginning July 1, 2017 and for the present time allow a grace period of 12 hours after the live programming is shown on television and eight hours after the near-live programming is shown on television before the clip must be captioned online.
- Find that compliance with the new requirements would be economically burdensome for video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips, and January 1, 2017 for montages, and thus exempt this class of video clips from coverage; and
- Generally apply the IP closed captioning requirements to video clips in the same manner that they apply to full-length video programming, which among other things means that the quality requirements applicable to full-length IP-delivered video programming will apply to video clips.

In short, while we expect that some small entities will be impacted by these rules, we find that any economic impact of these rules on small entities will be mitigated by the availability of exemptions due to economic burden, and by the provision of the CVAA providing that a *de minimis* failure to comply with these rules will not be treated as a violation.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

38. No comments were filed in response to the IRFA. Some parties have made filings on the record that address the potential impact on small entities of rules requiring closed captioning of IP-delivered video clips. Specifically, one commenter asserted that small broadcasters that currently voluntarily caption certain televised programming might cease doing so, to avoid triggering a requirement for captioning of online clips of that programming.[65] Another commenter argued that the technology is still developing and stated, ''If broadcasters, perhaps particularly smaller ones, were immediately to face FCC complaint procedures and potential enforcement actions for failing to caption online video clips with the requisite quality, this would act as a disincentive to place video clips online, at least until clip captioning technology improves in both quality and reliability.'' [66]

[65] Reply Comments of the Association of Public Television Stations and the Public Broadcasting Service at 2, 5–6. *But see* Consumer Groups Reply to Opposition of APTS/PBS, NAB, and NCTA at 5 (arguing that reductions in captioning costs no longer justify the television closed captioning exemption cited by APTS/PBS, in any event, and that the availability of exemptions due to economic burden should alleviate the concerns of APTS/PBS).

[66] Reply Comments of the National Association of Broadcasters at 10. *See also id.* at 5, n. 8 (''Some small market stations report that they can only afford to caption clips online if owned and subsidized by a larger market station, given the cost of clip captioning and the lack of revenue from online video clips.''); Disney June 18 *Ex Parte* Letter at 2 (''[T]he key aspect in crafting a *realistic* regime

Continued

3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

39. The RFA directs agencies to provide a description of and an estimate of the number of small entities to which the rules will apply. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Below are descriptions of the small entities that may be affected by the rules adopted in the *Video Clips Order,* including, where feasible, an estimate of the number of such small entities.

40. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, according to the SBA Office of Advocacy, in 2010, there were 27.9 million small businesses in the United States. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, a substantial majority may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

41. *Wired Telecommunications Carriers.* The North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms for the broad economic census category of ''Wired Telecommunications Carriers.'' Under this category, a wireline business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

42. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

43. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. According to SNL Kagan, there are 1,258 cable operators. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,584 cable systems nationwide. Of this total, 4,012 cable systems have fewer than 20,000 subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

44. *Cable System Operators* (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but 10 incumbent cable operators are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

45. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small

would be a long implementation period so that stations and programmers (both big and small) could budget for and undertake such a reconfiguration.'') (emphasis in original).

business size standard formerly titled ''Cable and Other Program Distribution.'' The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each reports annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

46. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

47. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

48. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

49. *Wireless cable systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

50. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate

that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

51. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

52. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

53. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

54. *Television Broadcasting.* This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' The SBA has created the following small business size standard for Television Broadcasting businesses: Those having $35.5 million or less in annual receipts. Census data for 2007 shows that 2,076 establishments in this category operated for the entire year. Of this total, 1,515 establishments had annual receipts of $10,000,000 or less, and 561 establishments had annual receipts of more than $10,000,000. Because the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $35.5 million in that year, the majority of such establishments can be considered small under this size standard.

55. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,388 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of $35.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities.

56. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

57. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis . . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such businesses having $35.5 million or less in annual revenues. Census data for 2007 shows that there were 659 establishments that operated for the entire year. Of that number, 462 operated with annual revenues of fewer than $10 million, and 197 operated with annual revenues of $10 million or more. Therefore, under this size standard, the majority of such businesses can be considered small.

58. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce programming for cable television. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The SBA has developed a small business size standard for this category, which is: Those having $30 million or less in annual receipts. Census data for 2007 shows that there were 9,095 firms in this category that operated for the entire year. Of this total, 8,995 firms had annual receipts of fewer than $25 million, and 43 firms had receipts of $25 million to $49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

59. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable

programming. Specific figures are not available regarding how many of these firms distribute programming for cable television. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The SBA has developed a small business size standard for this category, which is: Those having $29.5 million or less in annual receipts. Census data for 2007 shows that there were 450 firms in this category that operated for the entire year. Of this total, 434 firms had annual receipts of fewer than $25 million, and 7 firms had receipts of $25 million to $49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

60. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 500 or fewer employees. Census data for 2007 shows that there were 2,705 firms that operated for the entire year. Of this total, 2,682 firms had fewer than 500 employees, and 13 firms had between 500 and 999 employees. Therefore, under this size standard, the majority of such businesses can be considered small.

61. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year. Of this total, 912 establishments had fewer than 500 employees, and 10 establishments had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

62. *Audio and Video Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that 492 establishments in this category operated for part or all of the entire year. Of this total, 488 establishments had fewer than 500 employees, and three had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

63. *Closed Captioning Services.* These entities may be indirectly affected by our action. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

64. The first category of *Teleproduction and Other Postproduction Services* ''comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects.'' The SBA has developed a small business size standard for this category, which is: Those having $29.5 million or less in annual receipts. Census data for 2007 indicates that there were 1,605 firms that operated in this category for the entire year. Of this total, 1,587 firms had annual receipts of fewer than $25 million, and 9 firms had receipts of $25 million to $49,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

65. The second category of *Court Reporting and Stenotype Services* ''comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials.'' The SBA has developed a small business size standard for this category, which is: Those having $14 million or less in annual receipts. Census data for 2007 indicates that there were 2,706 firms that operated in this category for the entire year. Of this total, 2,687 had annual receipts of fewer than $10 million, and 11 firms had receipts of $10 million to $24,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

66. The rules adopted in the *Video Clips Order* generally extend the IP closed captioning requirements, which previously applied only to full-length video programming, to video clips. The *Video Clips Order* does not adopt a new regulatory regime, but rather, applies the existing regime for full-length IP-delivered video programming to IP-delivered video clips, with certain modifications in recognition of the differences between video clips and full-length video programming. Accordingly, there are no new reporting or recordkeeping requirements. There will, however, be new compliance requirements for small entities. Specifically, the IP closed captioning requirements will extend to IP-delivered video clips if the video programming distributor or provider posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions. The Commission adopts a compliance deadline of January 1, 2016 for ''straight lift'' clips, which contain a single excerpt of a captioned television program with the same video and audio that was presented on television, and January 1, 2017 for ''montages,'' which contain multiple straight lift clips. After the applicable deadlines, the new rules will require IP-delivered video clips to be provided with closed captions at the time the clips are posted online, except as otherwise provided. For clips of video

programming previously shown live or near-live on television with captions, the rules will require captions beginning July 1, 2017, and for the present time will allow a grace period of 12 hours after the live programming is shown on television and eight hours after the near-live programming is shown on television before the clip must be captioned online. The Commission finds that compliance with the new requirements would be economically burdensome for video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips and January 1, 2017 for montages, and thus the Commission exempts this class of video clips from coverage. In general, the Commission applies the IP closed captioning requirements to video clips in the same manner that they apply to full-length video programming, which among other things means that the quality requirements applicable to full-length IP-delivered video programming will apply to video clips.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

67. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

68. As explained above, the *Video Clips Order* does not adopt a new regulatory regime, but rather, applies the existing regime for full-length IP-delivered video programming to IP-delivered video clips, with certain modifications in recognition of the differences between video clips and full-length video programming. Accordingly, similar to the rules promulgated in the *IP Closed Captioning Order,* the rules adopted in the *Video Clips Order* may have a significant economic impact in some cases and that impact may affect a substantial number of small entities. Although the Commission has considered alternatives, where possible, to minimize economic impact on small entities, we note that our action is governed by the congressional mandate contained in the CVAA.

69. Notably, the same aspects of the IP closed captioning rules applicable to full-length programming that ease compliance burdens on small entities also apply to small entities in the context of video clips. Specifically, in the *IP Closed Captioning Order,* the Commission adopted procedures enabling it to grant exemptions to the rules governing closed captioning of IP-delivered video programming pursuant to Section 202 of the CVAA, where a petitioner has shown that compliance would present an economic burden (*i.e.,* a significant difficulty or expense), and pursuant to Section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.,* cannot be accomplished with reasonable effort or expense) or not technically feasible. As was the case with regard to full-length programming, this exemption process will allow the Commission to address the impact of the extension of the rules to video clips on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, as with full-length IP-delivered video programming, a *de minimis* failure to comply with the requirements adopted pursuant to Section 202 of the CVAA with regard to IP-delivered video clips will not be treated as a violation, and parties may continue to use alternate means of compliance to the rules adopted pursuant to either Section 202 or Section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

70. Overall, in crafting its new requirements, the Commission addressed the issues described in Section B above by providing reasonable timeframes within which entities may come into compliance, and by providing a grace period within which captions may be added to video clips of live or near-live programming. All of these provisions should ease the burdens that small entities otherwise would face in complying with these requirements. Further, in recognition of the burdens that would be imposed on regulated entities, in particular smaller entities, if faced with a requirement to caption video clips that are in the video programming distributor's or provider's online library before January 1, 2016 for straight lift clips and January 1, 2017 for montages, the Commission finds that such a requirement would be economically burdensome and thus exempts this category of video clips from coverage. We note, additionally, that a Commission requirement for captioning IP-delivered video clips will ensure that the content, including critical news programming, will be accessible to individuals who are deaf or hard of hearing, thus significantly benefiting consumers and serving the stated public interest goal of the CVAA.

6. Report to Congress

71. The Commission will send a copy of the *Video Clips Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[67] In addition, the Commission will send a copy of the *Video Clips Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Video Clips Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[68]

B. Paperwork Reduction Act

72. The *Video Clips Order* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

73. The Commission will send a copy of the *Video Clips Order* in MB Docket No. 11–154 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

D. Additional Information

74. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

75. Accordingly, *it is ordered* that, pursuant to the authority found in Sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613, this *Second Order on Reconsideration* IS *adopted,* effective thirty (30) days after the date of publication in the **Federal Register**.

76. *It is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613, the Commission's rules *are hereby amended* as set forth in the Final Rules below.

77. *It is further ordered* that the Commission's Consumer and

[67] *See* 5 U.S.C. 801(a)(1)(A).

[68] *See id.* 604(b).

Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Order on Reconsideration* MB Docket No. 11–154, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

78. *It is further ordered* that the Commission *shall send* a copy of this *Second Order on Reconsideration* in MB Docket No. 11–154 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

79. *It is further ordered* that Consumer Groups' Petition for Reconsideration, filed April 27, 2012, is *granted in part,* to the extent provided herein.

List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.4 by revising paragraph (b) to read as follows:

§ 79.4 Closed captioning of video programming delivered using Internet protocol.

* * * * *

(b) *Requirements for closed captioning of Internet protocol-delivered video programming.* (1) All nonexempt full-length video programming delivered using Internet protocol must be provided with closed captions if the programming is published or exhibited on television in the United States with captions on or after the following dates:

(i) September 30, 2012, for all prerecorded programming that is not edited for Internet distribution, unless it is subject to paragraph (b)(1)(iv) of this section.

(ii) March 30, 2013, for all live and near-live programming, unless it is subject to paragraph (b)(1)(iv) of this section.

(iii) September 30, 2013, for all prerecorded programming that is edited for Internet distribution, unless it is subject to paragraph (b)(1)(iv) of this section.

(iv) All programming that is already in the video programming distributor's or provider's library before it is shown on television with captions must be captioned within 45 days after the date it is shown on television with captions on or after March 30, 2014 and before March 30, 2015. Such programming must be captioned within 30 days after the date it is shown on television with captions on or after March 30, 2015 and before March 30, 2016. Such programming must be captioned within 15 days after the date it is shown on television with captions on or after March 30, 2016.

(2) All nonexempt video clips delivered using Internet protocol must be provided with closed captions if the video programming distributor or provider posts on its Web site or application a video clip of video programming that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline. The requirements contained in this paragraph shall not apply to video clips added to the video programming distributor's or provider's library before the video programming distributor or provider published or exhibited the associated video programming on television in the United States with captions on or after the applicable compliance deadline.

(i) The requirements contained in paragraph (b)(2) of this section shall apply with the following compliance deadlines:

(A) January 1, 2016, where the video clip contains a single excerpt of a captioned television program with the same video and audio that was presented on television.

(B) January 1, 2017, where a single file contains multiple video clips that each contain a single excerpt of a captioned television program with the same video and audio that was presented on television.

(C) July 1, 2017, for video clips of live and near-live programming.

(ii) Closed captions must be provided for video clips of live programming within 12 hours after the conclusion of the associated video programming's publication or exhibition on television in the United States with captions. Closed captions must be provided for video clips of near-live programming within eight hours after the conclusion of the associated video programming's publication or exhibition on television in the United States with captions.

* * * * *

[FR Doc. 2014–18203 Filed 8–4–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 06–49; FCC 14–79]

Rules in the 904–909.75 and 919.75–928 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Commission terminates the Multilateration Location and Monitoring Service (M–LMS) rulemaking proceeding in WT Docket No. 06–49 and concludes that the proposals for broad revisions of the applicable rules do not merit further consideration at this time.

DATES: *Effective Date:* September 4, 2014.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, email *Paul.DAri@fcc.gov*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, WT Docket No. 06–49, FCC 14–79, adopted June 9, 2014 and released June 10, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the R&O and OPM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 14–79. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. Introduction and Background

1. In 1995, the Commission established Location and Monitoring Service (LMS) as a new radio service to be licensed in the 902–928 MHz band. LMS shares this band with a variety of users: Federal radiolocation systems;

Industrial, Scientific, and Medical (ISM) equipment use; amateur operations; and Part 15 devices. LMS is secondary to Federal users and to ISM devices and may not cause interference to and must tolerate interference from these users and devices. Amateur radio operations are secondary to LMS. Unlicensed Part 15 devices are also authorized in the 902–928 MHz band, although such devices are not afforded interference protection rights and may not cause harmful interference to any licensed systems.

2. In establishing M–LMS, the Commission placed certain limitations on M–LMS operations to facilitate sharing of the 902–928 MHz band by multiple licensed services as well as unlicensed devices. The Commission also adopted certain provisions to facilitate the co-existence of M–LMS operations and Part 15 devices in the 902–928 MHz band. In particular, the Commission adopted a safe harbor rule for unlicensed devices and amateur operations in the band and required that M–LMS licensees demonstrate through actual field tests that ''their systems do not cause unacceptable levels of interference to Part 15 devices.'' In 1999 and 2001, the Commission auctioned M–LMS licenses.

3. In 2006, noting that there had been very limited development of M–LMS service under the existing rules, the Commission initiated the instant proceeding to examine various new approaches that potentially could make for more effective use of the M–LMS spectrum in the 904–909.75 and 919.75–928 MHz portions of the 902–928 MHz band. The Commission sought to evaluate whether to revise rules applicable to M–LMS operations and provide licensees greater flexibility to respond to market conditions while continuing to protect federal and other licensed users and also avoiding any significant increased interference to unlicensed users in the band. The record in this proceeding closed on June 30, 2006.

4. Most M–LMS licensees supported having additional flexibility to provide services and opposed any reduction in the power levels in which they could operate, and some sought modification or elimination of the field testing requirement. Commenters representing other users expressed concerns about allowing M–LMS operations additional flexibility, generally supported reductions in the power levels for such operations but not in conjunction with an increase in flexibility, and opposed elimination or supported retention of the Section 90.353(d) field testing requirement.

5. *Recent M–LMS developments.* Over the past few years, Progeny LMS, LLC (Progeny), which holds multiple M–LMS licenses, developed equipment and offers a service that operates in a manner generally consistent with the existing M–LMS framework. In March 2011, Progeny filed a petition seeking waiver of two existing M–LMS service rules to enable it to deploy an M–LMS network that utilizes a beacon system and advanced technologies not available when the M–LMS rules were adopted in 1995. In December 2011, the Wireless Telecommunications Bureau and the Office of Engineering and Technology granted a limited waiver to permit Progeny to continue developing its proposed location service, based, in part, on the public interest benefits of facilitating the deployment of a multilateration location service that can provide more accurate location determinations, including more precise location information that can improve delivery of E911 emergency services. This *limited waiver* applied the existing interference rules governing M–LMS operations in the 902–928 MHz band and required Progeny to satisfy the field testing requirement by submitting field testing for Commission review prior to commencing commercial operations. In June 2013, following review of field tests submitted by Progeny in January and October of 2012, the Commission concluded that Progeny could commence commercial operations of its position location service network. In approving these M–LMS operations in the 902–928 MHz band, the Commission applied the original M–LMS framework—including the interference-related requirements, the power limits permitted licensed M–LMS operations, and the field testing requirement—that the Commission established when it authorized the service in 1995.

II. Discussion

6. Based on the record before the Commission, and on recent developments pertaining to M–LMS operations in the 902–928 MHz band, the Commission concludes that the various proposals for wholesale revisions of the applicable rules do not merit further consideration at this time. Accordingly, the Commission terminates this proceeding.

7. In initiating the rulemaking in 2006, the Commission sought to evaluate whether to make various significant changes of the rules applicable to M–LMS to ensure that this service can be deployed in an effective and efficient manner. The Commission stated that its goal in this proceeding is to consider whether greater opportunity can be afforded M–LMS licensees to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. The Commission finds that wholesale changes to existing M–LMS framework that the Commission sought comment upon in the *M–LMS NPRM* (71 FR 15658 March 29, 2006) are not warranted and that the types of revisions that the Commission sought comment are not necessary to provide sufficient flexibility to M–LMS licensees to provide their location services. Based on recent developments pertaining to M–LMS operations in the 902–928 MHz band, the Commission believes that the existing M–LMS framework can provide M–LMS licensees with sufficient opportunities to provide service offerings. The Commission concluded that Progeny could commence commercial operations of its M–LMS position location service network, within the framework that the Commission initially had established to promote the co-existence of M–LMS operations and unlicensed operations in the band. Accordingly, the Commission concludes that terminating this rulemaking serves the public interest at this time.

8. *Final Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

9. *Congressional Review Act.* The Commission will not send a copy of this Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the Commission is not adopting any rules with this proceeding.

III. Ordering Clause

10. Accordingly, *it is ordered,* pursuant to the authority contained in Sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. 154(i) and (j), that the proceeding in WT Docket No. 06–49 is *hereby terminated.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–18518 Filed 8–4–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 592

[Docket No. NHTSA–2013–0041; Notice 2]

RIN 2127–AL43

Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the regulations on registered importers (''RIs'') of motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards. The amendment requires RIs to certify to NHTSA that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. The amendment restores text that was inadvertently omitted when the regulations were last revised.

DATES: The amendment made by this final rule will become effective on August 5, 2014. Petitions for reconsideration must be received by NHTSA no later than September 19, 2014.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers identified above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted. The petition must be received no later than 45 days after publication of this final rule in the **Federal Register**. Petitions filed after that time will be considered as petitions filed by interested persons to initiate rulemaking pursuant to 49 U.S.C. chapter 301.

The petition must contain a brief statement of the complaint and an explanation as to why compliance with the final rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. If it is requested that additional facts be considered, the petitioner must state the reason why they were not presented to the Administrator within the prescribed time. The Administrator does not consider repetitious petitions and unless the Administrator otherwise provides, the filing of a petition does not stay the effectiveness of the final rule.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202) 366–5288. For legal issues, you may contact Nicholas Englund, Office of Chief Counsel, NHTSA (202) 366–5263.

SUPPLEMENTARY INFORMATION:

Introduction

This rule was preceded by a notice of proposed rulemaking (NPRM) published on December 5, 2013 (78 FR 73169). As explained in the NPRM, NHTSA published a final rule on August 25, 2011 (76 FR 53072) amending parts 567, 591, 592, and 593 of title 49 to address issues related to the RI program. In amending the regulations, the agency inadvertently deleted from 49 CFR 592.6(d)(1) text under paragraphs (i) and (ii) that requires the RI to certify to NHTSA, as appropriate, that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541) or that the vehicle complies with those requirements as manufactured, or as modified prior to importation.

Comments

One comment was submitted in response to the NPRM, from Ms. Karen Jackson. Ms. Jackson expressed support for the proposed rule, ''as long as the amended compliance includes the same standards required of manufacturers in the United States.'' Ms. Jackson cautioned, however, that the amended regulations ''must not be price fixed to support another manufacturer or holder.'' In response, the agency notes that the amendments adopted by this final rule apply to RIs, which are businesses located in the United States. The amendments require RIs to certify to NHTSA that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. The agency has established no fees for an RI to make this certification and there is no price fixing associated with the certification. Because all RIs will be required to make the certifications to NHTSA, no competitive advantage can be gained by any individual RI in making this certification.

Background and Amendments

The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562, ''the 1988 Act''), which became effective on January 31, 1990, limited the importation of vehicles that did not comply with the Federal Motor Vehicle Safety Standards (FMVSS) to those capable of being modified to comply. To enhance oversight, the 1988 Act required that necessary modifications be performed by RIs. RIs are business entities that have demonstrated to NHTSA that they are technically and financially capable of importing nonconforming motor vehicles and of performing the necessary modifications on those vehicles so that they conform to all applicable FMVSS. See generally, 49 U.S.C. 30141–30147. As discussed in the January 14, 2011, proposed rulemaking that preceded the final rule (76 FR 2631), NHTSA proposed certain amendments to the RI regulations to protect the integrity of the RI program and to clarify RI requirements. In the final rule that was published on August 25, 2011 (76 FR 53072), CFR 592.6(d)(1) was amended by adding language requiring that RIs certify to NHTSA that they destroyed or exported nonconforming motor vehicle equipment that was removed from imported vehicles during conformance modifications. The remaining text of the paragraph remained unchanged and read:

The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.

In the regulatory text of the final rule, NHTSA inadvertently failed to properly mark subparagraphs (i) and (ii), resulting in the deletion of those paragraphs. In this rulemaking, the agency is restoring the language that was originally in subparagraphs (i) and (ii).

This amendment does not change the meaning or application of the regulations, as explained in the preamble of the final rule at 76 FR 53072.

Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This action was reviewed by the Office of Management and Budget under E.O. 12866. This rulemaking is not significant. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. The rule will have no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR § 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this rulemaking under the Regulatory Flexibility Act, and certifies that the adopted amendments will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The adopted amendments will primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies will be unable to certify that either: (i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or (ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.'' Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' the agency has considered whether this final rule will have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

In the NPRM, NHTSA requested public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement has any implications for this rulemaking. No comments were received regarding this matter.

G. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA. As noted above, this final rule is not significant under E.O. 12866. NHTSA also believes that this final rule would not have any effect on the supply, distribution or use of energy.

H. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because this final rule will not require the expenditure of resources beyond $100 million annually, this rulemaking action is not subject to the requirements of Sections 202 and 205 of the UMRA.

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 592 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0002, a consolidated collection of information for ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards,'' approved through January 31, 2014. A request for OMB to extend its approval of this information collection is currently pending. See notice at 78 FR 72749 (December 2, 2013). This final rule will not affect the burden hours associated with Clearance No. 2127–0002 because we are only reinstating regulatory text that was inadvertently omitted when the regulations were last amended. This final rule does not impose new collection of information requirements or otherwise affect the scope of the program.

J. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule reinstates regulatory text that was inadvertently omitted when the regulations at issue were last amended and it creates no substantive changes to the vehicle import program or any action that would require the use of voluntary consensus standards. For these reasons, Section 12(d) of the NTTAA does not apply.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 592

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR part 592 as follows:

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 592 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 592.6 to add paragraphs (d)(1)(i) and (ii) to read as follows:

§ 592.6 Duties of a registered importer.

* * * * *

(d) * * *

(1) * * *

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.

* * * * *

Issued On: July 22, 2014.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2014–17844 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 79, No. 150

Tuesday, August 5, 2014

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2014–BT–STD–0025]

RIN 1904–AD04

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Computer and Battery Backup Systems

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

ACTION: Extension of public comment period.

SUMMARY: This document announces an extension of the time period for submitting comments, data, and information on the framework document for computer and battery backup systems (hereafter referred to as ''computer systems'') published on July 17, 2014. The comment period is extended.

DATES: The comment period for the framework document for computer systems published on July 17, 2014 (79 FR 41656) is extended to October 2, 2014.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0025, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ComputerSystems2014STD0025@ee.doe.gov.* Include EERE–2014–BT–STD–0025 and/or RIN 1904–AD04 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Notice of Availability of Framework Document for Computer and Battery Backup Systems, EERE–2014–BT–STD–0025 and/or RIN 1904–AD04, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Phone:* (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: The docket is available for review at *http://www.regulations.gov,* and will include **Federal Register** notices, framework document, notice of proposed rulemaking, public meeting attendee lists and transcripts, comments, and other supporting documents/materials throughout the rulemaking process. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. The docket can be accessed by searching for docket number EERE–2014–BT–STD–0025 on the regulations.gov Web site. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *DOE_computer_standards@ee.doe.gov.*

In the Office of General Counsel, contact Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On July 17, 2014, the U.S. Department of Energy (DOE) published a document in the **Federal Register** initiating a rulemaking and data collection process to consider establishing energy conservation standards for computer systems. 79 FR 41656. In that document, DOE announced the availability of a framework document. The document provided for the submission of written comments by September 2, 2014. Jointly, the Consumer Electronics Association and the Information Technology Industry Council requested an extension of the public comment period to ensure that key industry representatives have adequate time to review and provide comments on the framework document given vacation schedules over the month of August and a comment deadline that ends the day after Labor Day, also a holiday period.

DOE has determined that an extension of the public comment period is appropriate to allow stakeholders additional time to submit comments to DOE for consideration. Thus, DOE is extending the comment period by 30 days. DOE will consider any comments received by October 2, 2014 to be timely submitted.

Issued in Washington, DC, on July 28, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–18349 Filed 8–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2013–BT–STD–0040]

RIN 1904–AC83

Energy Conservation Program for Certain Commercial and Industrial Equipment: Gas Compressors; Request for Information

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

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is considering

establishing energy conservation standards for commercial and industrial compressors. To date, DOE has proposed to consider energy conservation standards only for compressors intended to compress air, rather than gas. As a result, DOE's current efforts have focused solely on air compressors. However, DOE is also aware that compressors used to compress natural gas may also use a substantial amount of energy. To improve its understanding of natural gas compressors and their related markets, DOE requests information, comment, and supporting data about the characteristics and energy use of this equipment.

DATES: DOE will accept written comments, data, and information on this notice, but no later than September 4, 2014.

ADDRESSES: Interested persons are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2013–BT–STD–0040 or Regulation Identifier Number (RIN) 1904–AC83, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov* Follow the instructions for submitting comments.
- *Email: compressors@ee.doe.gov* Include EERE–2013–BT–STD–0040 and/or RIN 1904–AC83 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials (search EERE–2013–BT–STD–0040). All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/58.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See section III for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *compressors@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

Ms. Johanna Hariharan, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 287–6307. Email: *Johanna.Hariharan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
II. Discussion
III. Public Participation

I. Authority and Background

Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6291, *et seq.*, (EPCA) sets forth a variety of provisions designed to improve the energy efficiency of products and commercial equipment. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA 2012), Pub. L. 112–210 (December 18, 2012)). Part C of Title III (42 U.S.C. 6311–6317), which was subsequently re-designated as Part A–1 for editorial reasons, establishes an energy conservation program for certain industrial equipment, which includes compressors, the subject of today's notice. (42 U.S.C. 6311(2)(B)(i)) Unlike some other types of equipment included in EPCA, the term ''compressors'' is undefined.

Section 341 of EPCA, 42 U.S.C. 6312, provides a general statement of purpose to improve the efficiency of a variety of industrial equipment to conserve the energy resources of the Nation. Accordingly, section 341 further provides that the Secretary of Energy may, by rule, classify certain equipment as covered equipment if a determination is made that doing so is necessary to carry out the purposes of Part A–1 of EPCA. Consistent with this process, DOE is currently considering whether to regulate the efficiency of a specific group of compressors—commercial and industrial air compressors. 77 FR 76972 (December 31, 2012). DOE received comments from interested parties, which are available in docket number EERE–2013–BT–STD–0040. The comments were considered in developing a Framework Document to explain the relevant issues, analyses, and processes it anticipates using when considering new energy conservation standards for commercial and industrial air compressors. DOE issued that document and conducted a public meeting to discuss its contents earlier this year. 79 FR 6839 (Feb. 5, 2014).

Because the term ''compressors'' is undefined by EPCA, DOE considered a variety of definitions for this term in order to help ensure a reasonable level of clarity with respect to the type of equipment that might be regulated. In its ongoing proceeding, DOE offered for comment the following definition for ''commercial and industrial compressors'' to clarify the coverage of any potential test procedure or energy conservation standard:

Compressor: A compressor is an electric-powered device that takes in air or gas at atmospheric pressure and delivers the air or gas at a higher pressure. Compressors typically have a specific ratio, the ratio of delivery pressure to supply pressure, greater than 1.20.

After further evaluating this definition and considering the comments it received, DOE revisited this definition and offered a revised version. That version, which is based on International Organization for Standardization (ISO) Technical Report (TR) 12942, provides a different definition of the term ''compressor'' from DOE's initial

approach. (ISO TR 12942 provides a means to classify modern compressor types along with definitions and related terms that can be utilized in technical and contractual specifications such as a manufacturer's literature and industrial statistics.) The revised definition DOE offered for public comment reads as follows:

Compressor: A machine or apparatus converting different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure with pressure-increase ratios exceeding 1.1.[1]

DOE is continuing to consider revisions to this definition, however, due at least in part to submitted comments in which some parties have commented that the specified ratio should be different to avoid overlapping with what the compressor industry generally treats as ''blowers,'' equipment for which DOE may also establish standards. See 78 FR 7306 (Feb. 1, 2013) (announcing DOE's issuance of a framework document related to the potential setting of energy conservation standards for industrial fans and blowers).

DOE notes that the vast majority of compressors are air compressors. According to Current Industrial Reports from the U.S. Census Bureau,[2] shipments of new air compressors totaled 3.8 million in 2006, while shipments of new gas compressors were only around 6,000 units. As such, DOE at this point is considering establishing standards that would address only those compressors intended to compress air.[3]

While DOE's focus up until now has centered primarily on those compressors that are intended to compress air, compressors are used in a wide variety of applications and may be used to compress different types of gases. DOE is aware that compressors intended to compress other gases such as natural gas (i.e. gas compressors) may, both collectively and individually, use a substantial amount of energy, as such compressors are often very large. An important application of gas compressors is the pipeline transport of natural gas. The drivers for such compressors can be natural gas turbines (particularly since gas is an easily accessible fuel out in the field), steam turbines, internal combustion engines, or electric motors. Recent data provided by the Energy Information Administration (EIA) indicate that the annual amount of natural gas used to transport natural gas through the pipeline system was about 0.7 quadrillion Btu. In addition to the pipeline natural gas use, compressors are used in the production and processing of natural gas, which is accounted for in the 1.4 quadrillion Btu of natural gas reported by EIA as ''lease and plant fuel.''[4]

In the Framework Document, DOE stated that it is considering the possibility of setting air compressor standards based on equipment size as measured in rated horsepower (hp). This approach would help align its efforts with the current energy efficiency standards for electric motors, as codified in subpart B of Title 10 of the Code of Federal Regulations, Part 431 (10 CFR part 431) by covering compressor equipment rated from 1 through 500 hp. Because compressors often rely on the use of an electric motor to operate, aligning compressor standards in this manner could provide a relatively straight-forward approach that parallels the approach already established for electric motors. DOE may take a similar approach with respect to gas compressors as well but seeks comment on the appropriateness of doing so.

To inform its decision making regarding gas compressors, DOE requests information, comment, and supporting data about the characteristics, applications and energy use of gas compressors. In particular, DOE seeks comment and information about the topics below.

II. Discussion

DOE seeks a variety of different types of information to help inform its decision regarding how, if at all, to regulate gas compressor energy efficiency. To this end, DOE seeks detailed data regarding the following aspects related to gas compressors:

(1) Annual shipments.

a. DOE is seeking historical shipments data (specifically from 2003–2013) for gas compressors, with further breakdowns, where available, including, but not limited to, equipment type (both compression principle and driver type), equipment size, and application. DOE is also interested in comments regarding how gas compressors are manufactured and shipped as original equipment from the manufacturer, for example, as a package (i.e., with both air end and primary driver), or as a separate component, or both.

(2) Equipment types and sizes.

a. DOE is seeking comment regarding the types of equipment used in gas compressors. Specifically, DOE is interested in information regarding the compression principles (e.g., positive-displacement or dynamic compressors) and primary driver types (e.g., natural gas or steam turbines or electric motors) used in gas compressors, as well as what design, construction, and performance characteristics would be attributed to each type. DOE is also interested in information regarding the compression principles and driver types used in gas compressors based on application type.

b. DOE is also seeking comment regarding how gas compressors are sized (e.g., by brake horsepower, input/output pressure, or delivered air volume) and the general sizes of gas compressors based on both equipment and application type.

(3) Applications.

a. DOE is aware that an important application of gas compressors is in the transportation, production, and processing of natural gas. DOE seeks comment on other major applications (e.g., injection, withdrawal, lifting, or filling) in which gas compressors are used.

b. DOE also seeks information regarding any particular characteristics or features that are unique to each of these different applications.

(4) Typical energy use in each application type.

DOE seeks comment regarding the typical energy use of gas compressors broken down by, where available, application type, equipment type, and equipment size.

(5) Typical energy efficiency by equipment type.

DOE is interested in information regarding the typical range in efficiency levels of gas compressors broken down by equipment type and size.

(6) DOE is interested in what opportunities, if any, for improving gas compressor energy efficiency are possible and how these efficiency improvements may, or may not, impact equipment performance, features, utility or safety.

(7) DOE requests comment on whether the test procedures in ISO

[1] International Organization for Standardization (ISO), ISO 12942, Compressors—Classification—Complementary information to ISO 5390, International Organization for Standardization (ISO), 2012.

[2] Pumps and Compressors: 2006. Current Industrial Reports. U.S. Census Bureau. Available at:

[3] See p. 3 of the Framework Document. Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0040-0001.*

[4] Energy Information Administration, Annual Energy Outlook 2014, Table 2.

1217:2009[5] and ISO 5389:2005,[6] which address the testing of displacement and turbo compressors, respectively, would be appropriate for rating gas compressors. DOE also requests information on other applicable test procedures it should consider along with any deficiencies or issues that would need to be addressed prior to adopting a regulation mandating a particular test procedure.

(8) DOE requests feedback regarding any safety issues, regulations, codes, or standards (e.g., National Fire Protection Association requirements) that must be considered in the manufacture, testing, and use of gas compressors.

(9) DOE seeks information on any voluntary efforts by manufacturers that are already in place to improve the energy efficiency of gas compressors and what type of future voluntary efforts to improve efficiency, if any, are likely to occur in the near future.

(10) DOE seeks information regarding whether there are particular characteristics that would readily distinguish an ''air compressor'' from a ''gas compressor'' and whether those characteristics play any role with respect to the energy efficiency performance of these two categories of compressors.

(11) DOE requests comment on the market for natural gas compressors, and how they are marketed, sold, shipped, and assembled.

III. Public Participation

DOE invites all interested parties to submit in writing by the date specified previously in the DATES section of this RFI, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of gas compressors.

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on July 28, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–18348 Filed 8–4–14; 8:45 am]

BILLING CODE 6450–01–P

[5] International Organization for Standardization (ISO), ISO 1217, Displacement compressors—Acceptance tests, International Organization for Standardization (ISO), 2009.

[6] International Organization for Standardization (ISO), ISO 5389, Turbocompressors—Performance test code, International Organization for Standardization (ISO), 2005.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AE17

Transferred OTS Regulations Regarding Possession by Conservators and Receivers for Federal and State Savings Associations.

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 21, 2014, the Federal Deposit Insurance Corporation (FDIC) caused a document entitled ''Transferred OTS Regulations Regarding Possession by Conservators and Receivers for Federal and State Savings Associations'' to be published in the **Federal Register**. The effect of this publication was to give notice of a proposed rulemaking to rescind and remove regulations regarding possession by conservators and receivers for federal and state savings associations, which are no longer necessary in light of or contradict provisions of the Federal Deposit Insurance Act and are not in accordance with FDIC practice and procedures.

It has come to the attention of FDIC that the document submitted to the **Federal Register** was an early draft of the notice and not the final version approved by FDIC Board of Directors. FDIC is, therefore, withdrawing the document published July 21, 2014, and publishing the correct version elsewhere in the **Federal Register** today.

DATES: The notice of proposed rulemaking published on July 21, 2014 at 79 FR 42235 is withdrawn as of July 29, 2014.

FOR FURTHER INFORMATION CONTACT: Frank C. Campagna, Associate Director, Receivership Operations, Division of Resolutions and Receiverships (972) 761–8025 or *FrCampagna@FDIC.gov;* Manuel E. Cabeza, Counsel, Legal Division (703) 562–2434 or *mcabeza@fdic.gov;* or Shane Kiernan, Counsel, Legal Division (703) 562–2632 or *skiernan@fdic.gov.*

SUPPLEMENTARY INFORMATION: Section 316(b)(3) of the Dodd-Frank Act[1] provides that the former OTS's regulations will continue in effect until they are modified, terminated, set aside, or superseded in accordance with applicable law. After careful review of subpart N of part 390, the FDIC proposes that it be rescinded and removed because it is unnecessary, or because it prescribes actions that are duplicative of actions taken by the OCC or state chartering authority. The FDIC believes that the provisions of the FDI Act and the FDIC's existing policies and procedures sufficiently address the provision of notice of appointment and the authority to take possession of, and exercise control over, the assets of a failed institution, including insured Federal and State savings associations.

The complete history and background for the FDIC's removal and rescission of the subpart is included in the notice of proposed rulemaking published elsewhere in today's **Federal Register**.

Dated at Washington, DC, this 29th day of July, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–18261 Filed 8–4–14; 8:45 am]

BILLING CODE 6714–01–P

[1] 12 U.S.C. 5414(c).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AE17

Removal of Transferred OTS Regulations Regarding Possession by Conservators and Receivers for Federal and State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove regulations regarding possession by conservators and receivers for federal and state savings associations, which are no longer necessary in light of or contradict provisions of the Federal Deposit Insurance Act and are not in accordance with FDIC practice and procedures. The regulations were included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the

Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: Comments must be received on or before October 6, 2014.

ADDRESSES: You may submit comments by any of the following methods:

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the agency Web site.
- *FDIC Email: Comments@fdic.gov.* Include RIN 3064–AE17 in the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/*including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Frank C. Campagna, Associate Director, Receivership Operations, Division of Resolutions and Receiverships (972) 761–8025 or *FrCampagna@FDIC.gov;* Manuel E. Cabeza, Counsel, Legal Division (703) 562–2434 or *mcabeza@fdic.gov;* or Shane Kiernan, Counsel, Legal Division (703) 562–2632 or *skiernan@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[1] signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC as to State savings associations, the Office of Comptroller of the Currency (''OCC'') as to Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB'') as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such advisory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act[4] further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC respectively. On June 14, 2011 the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

FDIC's Authority

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (the ''FDI Act'')[7] and other laws as the ''appropriate Federal banking agency.'' Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act[8] and designated the FDIC as the ''appropriate Federal banking agency'' for State savings associations. As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations.

As noted, on June 14, 2011, the FDIC's Board of Directors reissued and redesignated certain regulations promulgated by the former OTS. These transferred OTS regulations were published as FDIC interim rules in the **Federal Register** on August 5, 2011.[9] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the regulations transferred to the FDIC set forth procedures to be followed by conservators and receivers for Federal and State savings associations upon taking possession of said entities and for providing notice of appointment. This OTS regulation, formerly found at 12 CFR part 558, was transferred to the FDIC with only nominal changes and is now sections 390.240 and 390.241 in subpart N.

The FDIC's authority to act as conservator or receiver and its powers and duties in those roles are set forth in the FDI Act[10] and in regulations found in 12 CFR. part 360. The Board has delegated authority to staff to establish policies and procedures for carrying out receivership operations. The FDI Act and the policies and procedures implemented and followed by FDIC staff subsume the responsibilities set forth in subpart N.[11]

II. The Proposal

Section 316(b)(3) of the Dodd-Frank Act[12] provides that the former OTS's regulations will continue in effect until they are modified, terminated, set aside, or superseded in accordance with applicable law. After careful review of subpart N, the FDIC proposes that it be rescinded and removed because it is unnecessary, or because it prescribes actions that are duplicative of actions taken by the OCC or state chartering authority. The FDIC believes that the provisions of the FDI Act and the FDIC's existing policies and procedures sufficiently address the provision of notice of appointment and the authority to take possession of, and exercise control over, the assets of a failed institution, including insured Federal and State savings associations.

12 CFR 390.240—Procedure Upon Taking Possession

The FDIC interim rule found at 12 CFR 390.240 (''section 390.240'') is the redesignation of the OTS regulation outlining procedures to be followed by conservators and receivers for Federal and State savings associations for taking possession of said entities upon appointment. The FDIC is proposing that section 390.240 be rescinded and removed because it is unnecessary. Paragraph (a) requires the conservator or receiver to take possession of the failed

[1] Public Law 111–203, 12 U.S.C. 5301, *et seq.* (2010).

[2] 12 U.S.C. 5411.

[3] 12 U.S.C. 5414(b).

[4] 12 U.S.C. 5414(c).

[5] 76 FR 39247 (July 6, 2011).

[6] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811, *et seq.*

[8] 12 U.S.C. 1813(q).

[9] 76 FR 47652 (August 5, 2011).

[10] 12 U.S.C. 1811, *et seq.*

[11] Such policies and procedures include the FDIC Division of Resolution and Receivership's Failed Financial Institution Closing Manual.

[12] 12 U.S.C. 5414(c).

institution's principal office in accordance with the terms of the appointment. FDIC's procedure already provides that it takes coordinated simultaneous possession of all locations from which a failed institution operates. Moreover, the FDIC's powers and duties as conservator or receiver are set forth in the FDI Act, not pursuant to the ''terms of the . . . appointment.''

Paragraphs (b)(1) and (b)(5), respectively, provide that the conservator or receiver shall immediately take possession of the institution's books, records, and assets, and shall succeed to rights, titles, powers and privileges of the savings association and its stockholders, members, account holders, depositors, officers, and directors. These provisions are redundant of the FDI Act, which already provides that the FDIC succeeds to ''all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution'' when acting as conservator or receiver.[13]

Paragraphs (b)(2), (3), and (4), respectively, instruct the conservator or receiver to ''notify in writing, served personally or by registered mail or telegraph'' all parties known to be holding or in possession of assets of the failed institution that the conservator or receiver has succeeded to all rights, powers and privileges of the failed institution; file a statement with the Executive Secretary that the conservator or receiver took possession of the failed institution; and post a notice on the door of the principal and other offices of the failed institution in the form, if any, prescribed by the OCC or state bank supervisor. For three reasons, these provisions are unnecessary given existing FDIC policies and procedures. First, the FDIC's practice is to demand the return of assets of the failed institution in whatever manner and form that is appropriate under the circumstances. Second, the Executive Secretary is provided with a copy of all closing documents by FDIC staff. Third, the OCC or state bank supervisor itself posts its order closing the institution on the door of the principal office.

12 CFR 390.241—Notice of Appointment

The FDIC interim rule found at 12 CFR 390.241 (''section 390.241'') is the redesignation of the OTS regulation outlining procedures for giving notice of the appointment of a conservator or receiver for a Federal or State savings association. The FDIC is proposing that section 390.241 be rescinded and removed because it is unnecessary. Specifically, paragraph (a) requires the FDIC to designate the persons or entities who are to: (1) Give notice of the appointment ''to any officer or employee who is present in and appears to be in charge at the principal office of the savings association;''[14] (2) serve a copy of the order of appointment by (i) ''leaving a certified copy of the order of appointment at the principal office of the savings association,''[15] or (ii) ''handing a certified copy of the order of appointment to the previous conservator . . . or the officer or employee of the savings association . . . who is present in and appears to be in charge at the principal office of the savings association;''[16] and (3) file with the Executive Secretary of the FDIC a statement that includes the date and time that notice of the appointment was given and service of the order of appointment was made.''[17] It is not necessary to include these provisions among the FDIC's regulations because the OCC or state chartering authority is responsible for providing or serving notice of the appointment of the FDIC as conservator or receiver on a Federal or State savings association. Further, the FDIC's Executive Secretary maintains records of the appointment of the FDIC as conservator or receiver. Paragraph (b), which instructs the FDIC to cause a notice of the appointment of the conservator or receiver to be published in the **Federal Register**, is unnecessary because the FDIC causes such a publication regarding any institution for which it is appointed as conservator or receiver in accordance with its policy and procedures. For these reasons, the FDIC proposes that subpart N should be rescinded and removed. Rescinding subpart N will serve to streamline the FDIC's rules, prevent confusion and eliminate unnecessary regulations.

III. Request for Comments

The FDIC invites comments on all aspects of the proposal. Written comments must be received by the FDIC no later than October 6, 2014.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) (''PRA''), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. Removing subpart N will not revise any existing information collections pursuant to the PRA. Consequently, FDIC has not submitted any information collection request to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq. (''RFA''), requires that each federal agency either (1) certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or (2) prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. Rescinding subpart N will leave the FDI Act as the sole source of the FDIC's authority to act as conservator or receiver for an insured depository institution and does not impose any obligations or restrictions on banking organizations, including small banking organizations. On this basis, the FDIC certifies that this proposal, if it is adopted in final form, would not have a significant impact on a substantial number of small entities within the meaning of those terms as used in the RFA.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposal to rescind Subpart N in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act.

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions. The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the

[13] 12 U.S.C. 1821(d)(2)(A).

[14] 12 CFR 390.241(a)(1).

[15] 12 CFR 390.241(a)(2)(i).

[16] 12 CFR 390.241(a)(2)(ii).

[17] 12 CFR 390.241(a)(3).

EGRPRA review that is currently under way. As part of that review, the FDIC invites comments concerning whether the proposal would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

List of Subjects in Part 390

Banks and banking; Savings Associations.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 5412, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

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

Authority: *12 U.S.C. 1819.*

Subpart A also issued under 12 *U.S.C. 1820.*

Subpart B also issued under 12 *U.S.C. 1818.*

Subpart C also issued under *5 U.S.C. 504*; 554–557; *12 U.S.C. 1464*; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; *15 U.S.C. 78 l;* 78o–5; 78u–2; *28 U.S.C. 2461* note; *31 U.S.C. 5321*; *42 U.S.C. 4012a.*

Subpart D also issued under *12 U.S.C. 1817*; 1818; 1820; *15 U.S.C. 78 l.*

Subpart E also issued under *12 U.S.C. 1813*; 1831m; *15 U.S.C. 78.*

Subpart F also issued under *5 U.S.C. 552*; 559; *12 U.S.C. 2901 et seq.*

Subpart G also issued under *12 U.S.C. 2810 et seq.,* 2901 *et seq.; 15 U.S.C. 1691*; *42 U.S.C. 1981*, 1982, 3601–3619.

Subpart H also issued under *12 U.S.C. 1464*; 1831y.

Subpart I also issued under *12 U.S.C. 1831x.*

Subpart J also issued under *12 U.S.C. 1831*p–1.

Subpart L also issued under *12 U.S.C. 1831*p–1.

Subpart M also issued under *12 U.S.C. 1818.*

Subpart O also issued under *12 U.S.C. 1828.*

Subpart P also issued under *12 U.S.C. 1470*; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464.

Subpart R also issued under *12 U.S.C. 1463*; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; *15 U.S.C. 78*b; 78 *l;* 78m; 78n; 78p; 78q; 78w; *31 U.S.C. 5318*; *42 U.S.C. 4106.*

Subpart T also issued under *12 U.S.C. 1462*a; 1463; 1464; *15 U.S.C. 78*c; 78 *l;* 78m; 78n; 78w.

Subpart U also issued under *12 U.S.C. 1462*a; 1463; 1464; *15 U.S.C. 78*c; 78 *l;* 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under *12 U.S.C. 3201*–3208.

Subpart W also issued under *12 U.S.C. 1462*a; 1463; 1464; *15 U.S.C. 78*c; 78 *l;* 78m; 78n; 78p; 78w.

Subpart X also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under *12 U.S.C. 1831*o.

Subpart Z also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1828 (note).

Subpart N—[Removed and Reserved]

■ 2. Remove and reserve subpart N, consisting of §§ 390.240 through 390.241.

Dated at Washington, DC, this 15th day of July, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–18262 Filed 8–4–14; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0532; Directorate Identifier 2014–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracking of control column at the wiring access hole, which could lead to loss of control. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 19, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pacific Aerospace Limited, Airport Road, Hamilton Private Bag 3027 Hamilton 3240, New Zealand; telephone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *http://www.aerospace.co.nz/.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0532; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@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–2014–0532; Directorate Identifier 2014–CE–016–AD'' at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, has issued AD DCA/FU24/183, dated May 29, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

This AD requires an inspection of the control column for mechanical damage, deformation and cracks per the instructions in Pacific Aerospace Limited (PAL) Mandatory Service Bulletin (MSB) No. PACSB/FU/095 issue 2 dated 28 May 2014. For control columns found with mechanical damage or deformation the AD requires a 50 hour repetitive NDT inspection until replacement. Control column replacement is required at the next maintenance inspection, or within the next 150 hours TIS, whichever is the later.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0532.

Relevant Service Information

Pacific Aerospace Limited has issued Mandatory Service Bulletin PACSB/FU/095, Issue 2, dated May 28, 2014. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 1 product of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $42.50, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $1,000, for a cost of $1,680 per product. We have no way of determining the number of products that may need these actions.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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 AD:

Pacific Aerospace Limited: Docket No. FAA–2014–0532; Directorate Identifier 2014–CE–016–AD.

(a) Comments Due Date

We must receive comments by September 19, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracking of the control column at the wiring access hole. We are issuing this AD to detect and correct cracking of the control column at the wiring access hole which could cause control column failure and subsequent loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(3) of

this AD, following the accomplishment instructions in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/095, Issue 2, dated May 28, 2014.

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the control column part number (P/N) 08–45031/32 for cracks.

(2) If any mechanical damage, deformation, or cracks are found, before further flight, replace the control column with an airworthy control column P/N 08–45031/32.

(3) If no mechanical damage, deformation, or cracks are found after the inspection required in paragraph (f)(1) of this AD, at the next scheduled maintenance inspection or within the next 150 hours TIS, whichever occurs later, replace the control column with an airworthy P/N 08–45031/32.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123 ; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/FU24/183, dated May 29, 2014, and Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/095, Issue 2, dated May 28, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0532. For service information related to this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton Private Bag 3027 Hamilton 3240, New Zealand; telephone: +64 7 843 6144; fax: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *http://www.aerospace.co.nz/.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 29, 2014.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18449 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0522; Directorate Identifier 2014–NM–087–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This proposed AD was prompted by reports of cracks at the lower forward corner of the main entry door (MED) 1 cutout. This proposed AD would require repetitive inspections of the MED door 1 for cracking, and repair if necessary. This proposed AD also provides optional terminating modification; and would require post-repair or post-modification inspections for cracking, and corrective actions if necessary. We are proposing this AD to detect and correct skin cracking, which can become large and could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by September 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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may 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–2014–0522; 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: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0522; Directorate Identifier 2014–NM–087–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracks at the lower forward corner of the MED 1 cutout on two airplanes. A 1.0-inch crack in the skin and bearstrap was found on an airplane with 17,605 total flight cycles. A 5.0-inch crack was found in the skin, skin doubler, and bearstrap on an airplane with 21,759 total flight cycles. In addition, four cracks between 0.18- and 1.85-inch were found on Boeing's fatigue test airplane

between 40,000 and 52,250 total pressure cycles. The manufacturer's analysis has determined that the cracking initiates in the skin and can propagate into the bonded doubler and bearstrap. Skin cracks that are not found and repaired can become large and could adversely affect the structural integrity of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0522.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 165 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (per door)	11 work-hours × $85 per hour = $935 per inspection cycle.	$0	$935 per inspection cycle.	$154,275 per inspection cycle.
Optional modification (per door).	Up to 66 work-hours × $85 per hour = $5,610	0	Up to $5,610	Up to $925,650.
Post-repair or -modification inspection (per door).	11 work-hours × $85 per hour = $935 per inspection cycle.	0	$935 per inspection cycle.	$154,275 per inspection cycle.

We estimate the following costs to do any necessary repair that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair (per door)	66 work-hours × $85 per hour = $5,610	$7,380 or $9,360	$12,990 or $14,970.

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):

The Boeing Company: Docket No. FAA–2014–0522; Directorate Identifier 2014–NM–087–AD.

(a) Comments Due Date

We must receive comments by September 19, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks at the lower forward corner of the main entry door (MED) 1 cutout. We are issuing this AD to detect and correct skin cracking, which can become large and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

Except as specified in paragraph (j)(1) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014: Do a detailed inspection and a surface high frequency eddy current inspection for cracking of the applicable main entry door 1; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014. Do all applicable corrective actions before further flight. Repeat the inspections of the applicable main entry door 1 thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014. Accomplishing the corrective actions required by this paragraph terminates the repetitive inspection requirements of this paragraph.

(h) Optional Terminating Action

For airplanes on which no crack is found during the initial inspections required by paragraph (g) of this AD: Installing the preventive modification in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014, terminates the repetitive inspections required by paragraph (g) of this AD.

(i) Post-Repair or Post-Modification Repetitive Inspections and Corrective Actions

For airplanes on which the corrective actions required by paragraph (g) of this AD have been done, or airplanes that have installed the preventive modification specified in paragraph (h) of this AD: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014, do a detailed inspection for cracking of the applicable main entry door 1; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014, except as specified in paragraph (j)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection of the applicable main entry door 1 thereafter at the intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014.

(j) Exceptions to Service Information

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014, specifies a compliance time ''after the Original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2863, dated March 11, 2014, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(l) Related Information

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

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

Issued in Renton, Washington, on July 25, 2014.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–18465 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 90

[OVW Docket No. 111]

RIN 1105–AB43

Grants To Encourage Arrest Policies and Enforcement of Protection Orders

AGENCY: Office on Violence Against Women, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations for the Grants To Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) to incorporate statutory changes, make minor technical corrections, and streamline existing regulations to reduce repetition of statutory language. This rule would also amend the regulations to clarify that existing regulations on grant-related procedures continue to apply to grants made by the Office on Violence Against Women.

DATES: Written comments must be submitted on or before October 6, 2014.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. OVW 111 on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also

available at the *http://www.regulations.gov* Web site. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Marnie Shiels, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Office on Violence Against Women, 145 N Street NE., Suite 10W.121, Washington, DC 20530, by telephone (202) 307–6026 or by email at *marnie.shiels@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Violence Against Women Act and Subsequent Legislation

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services for victims of these crimes. VAWA recognized the need for specialized responses to violence against women given the unique barriers that impede victims from accessing assistance from the justice system. To help communities develop these specialized responses, VAWA authorized several grant programs, including the Grants to Encourage Arrest Policies Program (Arrest Program). The Arrest Program is codified at 42 U.S.C. 3796hh through 3796hh–4. The final rule for the Arrest Program, found at 28 CFR part 90, subpart D, was promulgated on August 6, 1996.

On October 28, 2000, Congress enacted the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464. On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), Public Law 109–162, 119 Stat. 2960. On March 7, 2013, Congress enacted the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54. These reauthorizations all enhanced the Arrest Program in different ways.

Grants To Encourage Arrest Policies and Enforcement of Protection Orders Program

The Arrest Program is designed to encourage State, local, and tribal governments and State, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law. The Arrest Program recognizes that sexual assault, domestic violence, dating violence, and stalking are crimes that require the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution of violent offenders, and through close judicial scrutiny and management of offender behavior. The Arrest Program challenges the community to listen, communicate, identify problems, and share ideas that will result in new responses to ensure victim safety and offender accountability.

VAWA 2000 made several changes to the Arrest Program including prioritizing enforcement of protection orders, recognizing the roles of courts, probation, and parole, and addressing the specific needs of older victims and victims with disabilities. VAWA 2005 made additional changes including expanding the program to address sexual assault, adding new purpose areas, and adding new certification requirements relating to HIV testing of sex offenders and prohibiting polygraphing of sexual assault victims. VAWA 2013 added several sexual assault-specific purpose areas, a set aside of funds of 25% for projects that address sexual assault, and improved the certification and eligibility requirements.

Description of Proposed Changes

This rule proposes to amend the regulations for the Arrest Program to comply with statutory changes and reduce repetition of statutory language.

In addition, the Violence Against Women Office Act, title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, codified at 42 U.S.C. 3796gg–0 et seq., authorized the Office on Violence Against Women as a ''separate and distinct office within the Department of Justice.'' To avoid any possible confusion, this rule would clarify that the existing grant-making provisions of 28 CFR Part 18, which set forth hearing and appeal procedures available for applicants and for recipients of certain Department of Justice grant funding, apply to grants administered by the Office on Violence Against Women.

Executive Orders 12866 and 13563—Regulatory Review

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563 ''Improving Regulation and Regulatory Review'' section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule relates to matters of agency practice and procedure and amends the applicable regulations to conform to statutory changes.

Executive Order 13132

This proposed regulation draft will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office on Violence Against Women, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: The economic impact is limited to the Office on Violence Against Women's appropriated funds.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Parts 0 and 90

Grant programs; Judicial administration.

For the reason set forth in the preamble, the Office on Violence Against Women proposes to amend 28 CFR parts 0 and 90 as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.122, add a new paragraph (c) to read as follows:

§ 0.122 Office on Violence Against Women

* * * * *

(c) Departmental regulations set forth in part 18 of this title, shall apply with equal force and effect to grant programs administered by the Office on Violence Against Women, with references to the Office of Justice Programs and its components in such regulations deemed to refer to the Office on Violence Against Women, as appropriate.

PART 90—VIOLENCE AGAINST WOMEN

■ 3. Subpart D is revised to read as follows:

Subpart D—Arrest Policies in Domestic Violence Cases

Secs.

90.60 Scope
90.61 Definitions and Grant Conditions
90.62 Purposes
90.63 Eligibility
90.63a Speedy Notice to Victims
90.64 Application Content
90.65 Evaluation
90.66 Review of Applications

§ 90.60 Scope

The eligibility criteria, purpose areas, application requirements, and statutory priorities for this program are established by 42 U.S.C. 3796hh *et seq.*

§ 90.61 Definitions and Grant Conditions

(a) In General. For purposes of this subpart, the definitions and grant conditions in 42 U.S.C. 13925 apply.

(b) Unit of Local Government. For the purpose of this subpart, a unit of local government is any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

The following are not considered units of local government for purposes of this subpart:

- Police departments;
- Pre-trial service agencies;
- District or city attorneys' offices;
- Sheriffs' departments;
- Probation and parole departments;
- Shelters;
- Nonprofit, nongovernmental victim service providers; and
- Universities.

§ 90.62 Purposes

(a) Purpose areas for the program are provided by 42 U.S.C. 3796hh(b).

(b) Grants awarded for these purposes must demonstrate meaningful attention to victim safety and offender accountability.

§ 90.63 Eligibility

(a) Eligible entities are described in 42 U.S.C. 3796hh(c).

(b) Certifications.

(1) State, local, and tribal governments. State, local, and tribal government applicants must certify that they meet the requirements of 42 U.S.C. 3796hh(c)(A) through (E) or that they will meet the requirements by the statutory deadline.

(2) Courts. Court applicants must certify that they meet the requirements of 42 U.S.C. 3796hh(c)(C) through (E) or that they will meet the requirements by the statutory deadline.

(3) State, tribal, or territorial domestic violence or sexual assault coalitions or victim service providers. Applicants that are domestic violence or sexual assault coalitions or other victim service providers must partner with a State, local, or tribal government. The partner government must certify that it meets the requirements of 42 U.S.C. 3796hh(c)(A) through (E) or that it will meet the requirements by the statutory deadline.

(4) Letters. Eligible applicants or partners must submit a letter with proper certifications signed by the chief executive officer of the State, local government, or tribal government participating in the project, in order to satisfy these statutory requirements. OVW will not accept submission of statutes, laws or policies in lieu of such a letter.

(c) Partnerships.

(1) Governments and courts. All State, local, and tribal government and court applicants are required to enter into a formal collaboration with victim service providers and, as appropriate, population specific organizations. Sexual assault, domestic violence, dating violence, or stalking victim service providers must be involved in the development and implementation of the project. In addition to the requirements of 42 U.S.C. 13925, victim service providers should meet the following criteria:

(A) Address a demonstrated need in their communities by providing services that promote the dignity and self-sufficiency of victims, improve their access to resources, and create options for victims seeking safety from perpetrator violence; and

(B) Do not engage in or promote activities that compromise victim safety.

(2) Coalitions and victim service providers. All State, tribal, or territorial domestic violence or sexual assault coalition and other victim service provider applicants are required to enter into a formal collaboration with a State, Indian tribal government or unit of local government, and, as appropriate, population specific organizations.

§ 90.63a Speedy Notice to Victims

(a) In General. A State or unit of local government shall not be entitled to 5 percent of the funds allocated under this subpart, unless the State or unit of local government certifies that it meets the requirements regarding speedy notice to victims provided in 42 U.S.C. 3796hh(d).

(b) Units of local governments.

(1) Units of local government grantees may certify based on State law, policy, or regulation or based on local law, policy, or regulation.

(2) In the event that a unit of local government does not have authority to prosecute ''crime[s] in which by force or threat of force the perpetrator compels the victim to engage in sexual activity[,]'' the unit of local government may submit a letter from an appropriate legal authority in the jurisdiction certifying that the jurisdiction does not have the authority to prosecute ''crime[s] in which by force or threat of force the perpetrator compels the victim to engage in sexual activity'' and that therefore the certification is not relevant to the unit of local government in question.

§ 90.64 Application Content

(a) Format. Applications from eligible entities must be submitted as described in the relevant program solicitation

developed by the Office on Violence Against Women and must include all the information required by 42 U.S.C. 3796hh–1(a).

(b) Each eligible applicant must certify that all the information contained in the application is correct. All submissions will be treated as a material representation of fact upon which reliance will be placed, and any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§ 90.65 Evaluation

(a) Recipients of Arrest Program funds must agree to cooperate with federally-sponsored research and evaluation studies of their projects at the direction of the Office on Violence Against Women.

(b) Grant funds may not be used for purposes of conducting research or evaluations. Recipients of Arrest Program funds are, however, strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of their projects. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice or other research funding sources for this purpose.

§ 90.66 Review of Applications

The provisions of 42 U.S.C. 3796 et seq. and of the regulations in this subpart provide the basis for review and approval or disapproval of applications and amendments in whole or in part.

Dated: July 24, 2014.

Bea Hanson,

Principal Deputy Director.

[FR Doc. 2014–18276 Filed 8–4–14; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

[NPS–WASO–15398; PX.XVPAD0517.00.1]

RIN 1024–AE22

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our concessions contracts regulations to clarify that the Director may amend or extend a prospectus soliciting proposals for a concession contract prior to and including the proposal due date; and award a temporary concession contract. We are also updating consolidated information collection requirements.

DATES: Comments must be received by September 4, 2014.

ADDRESSES: You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE22, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail to: Debra Hecox, Commercial Services Program, National Park Service, 12795 West Alameda Pkwy, Lakewood, CO 80228.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jo Pendry, National Park Service Acting Chief of Commercial Services, by telephone: 202–513–7156 or email: *jo_pendry@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) issues concession contracts to provide commercial visitor services in over 150 units of the National Park System under the authority of the NPS Concessions Management Improvement Act of 1998 (Pub. L. 105–391; 16 U.S.C. 5951–5966 (1998 Act). Title 36 CFR Part 51, adopted in 2000, implements the 1998 Act. The proposed rule would clarify an ambiguity in 36 CFR 51.11, eliminate outdated procedural restrictions in 36 CFR 51.24, and update 36 CFR 51.104. You may view information about the NPS Commercial Services Program at *http://concessions.nps.gov.*

Amending or Extending a Prospectus (36 CFR 51.11)

Title 36 CFR 51.11 describes when the NPS may amend or extend the solicitation period for a prospectus seeking proposals for a concession contract opportunity. As written, the regulation could be interpreted to limit the agency's needed ability to amend or extend a solicitation on the date the solicitation period expires. The proposed rule would clarify that the NPS may amend a prospectus or extend the submission date prior to and on the proposal due date.

Awarding a Temporary Concession Contract (36 CFR 51.24)

Under the 1998 Act, the NPS may award temporary concession contracts for a term not to exceed three years in order to avoid an interruption of services to the public. (16 U.S.C. 5952(11)).

The current 36 CFR 51.24 describes the circumstances under which the NPS may award a temporary concession contract. When the NPS promulgated 36 CFR Part 51 in its implementation of the 1998 Act, it provided in § 51.24 that, except in limited circumstances, the Director could not issue a temporary concession contract to continue visitor services provided under an extended contract. This regulatory restriction was the result of a policy decision of the NPS rather than a requirement of the 1998 Act. Although the NPS has successfully awarded replacement contracts within the term limits of contracts and authorized extension periods, the inventory of concession contracts currently includes several extended, complex contracts with respect to which the NPS may need the flexibility to award a temporary contract upon contract expiration in order to assure that visitor services continue uninterrupted.

The proposed rule would amend § 51.24(a) to provide this flexibility. The NPS anticipates it would exercise this authority sparingly and only when the award of a temporary contract is the only practical alternative to an interruption of visitor services.

In addition, the NPS proposes the deletion of the text of 36 CFR 51.24(b) in its entirety but with its current last sentence moved to be the last sentence in the amended § 51.24(a) for purposes of determining the existence of a preferred offeror when awarding a temporary concession contract to continue services under an extended concession contract. The current § 51.24(b) only applies to contracts that were in effect as of November 13, 1998, and that either had been extended as of that date or were due to expire by December 31, 1998, and were subsequently extended. There are no longer any existing NPS concession contracts that fall within these limitations and this provision is no longer needed.

Accordingly, we would make two conforming amendments. We are proposing to delete the current reference to § 51.24(b) in § 51.22, and we are also proposing to revise the current reference

to § 51.24(b) stated in § 51.24(c) and replace it with a reference to § 51.24(a).

Update to OMB Approval of Information Collection (36 CFR 51.104)

In November 2013, OMB approved the NPS request to consolidate the information collection requirements associated with applying for and operating NPS concessions (previously approved under four separate control numbers: 1024–0029, 1024–0125, 1024–0126, and 1024–0231) into one single control number, 1024–0029. Upon receiving OMB approval for the renewal and consolidation of 1024–0029, the NPS discontinued OMB Control Numbers 1024–0125, 1024–0126, and 1024–0231.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled ''Economic Analysis of the Proposed Rulemaking to Amend the Concession Contract Regulations of the National Park Service'' which can be viewed online at *http://concessions.nps.gov/regulations.htm.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Administrative Procedure Act

This proposed rule is available for public review and comment for a period of 30 days. While the NPS would typically provide a 60-day comment period for such rulemakings, good cause exists for the shortened comment period because the NPS is facing the possibility that, due to contracting delays, it may this year have expiring concession contracts that it has no authority to extend further. This situation could result in closure of visitor facilities at affected parks and thereby deprive park area visitors of needed concession services. This comment period will still allow public participation and NPS review of the comments in a time frame that would allow promulgation of a final rule that could allow the NPS to enter into temporary contracts for those expiring contracts without an interruption in visitor services this year. This will keep visitor services open, private sector businesses operating, and avoid employee layoffs. The NPS does not anticipate that the changes in this proposed rule will generate significant controversy and public comment. As a result, the NPS believes that the public benefits of promulgating this rule earlier than normal will outweigh any speculative costs that may be associated with shortening the comment period.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined it has no substantial direct effects on federally recognized Indian tribes and consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new collections of information that require approval by the Office of Management and Budget under the PRA. The rule would not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or organizations. OMB has reviewed and approved the information collection requirements associated with concessions and assigned OMB Control No. 1024–0029, which expires November 30, 2016. We may not conduct or sponsor and you are not required to respond to a collection of

information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Have logical organization;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Have short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should specifically identify where we could improve. For example, you should tell us the numbers of the sections or paragraphs you find unclear, which sections or sentences are too long, the sections where you would find lists or tables useful, etc.

Drafting Information: The primary author of this regulation was Debra Hecox, National Park Service, Commercial Services Program, Washington, DC.

Public Participation

The Department of the Interior, whenever practicable, affords the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. We must receive all comments by midnight of the close of the comment period. We will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, please know that we may make your entire comment—including your personal identifying information—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 we will be able to comply with your request.

List of Subjects in Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 51 as follows:

PART 51—CONCESSION CONTRACTS

■ 1. Revise the authority citation for part 51 to read as follows:

Authority: 16 U.S.C. 1 *et seq.,* particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

■ 2. Revise § 51.11 to read as follows:

Subpart C—Solicitation, Selection, and Award Procedures

§ 51.11 May the Director amend, extend, or cancel a prospectus of solicitation?

The Director may amend a prospectus or extend the submission date, or both, prior to and on the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited solicitation for a concession contract.

■ 3. In § 51.22, revise the first sentence to read as follows:

§ 51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of $5,000,000 or of more than 10 years in duration, the Director must submit the concession contract to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

* * * * *

■ 4. In § 51.24:

■ A. Revise paragraph (a);

■ B. Remove and reserve paragraph (b); and

■ C. Revise paragraph (c).

The revisions to read as follows:

Subpart D—Non-Competitive Award of Concession Contracts

§ 51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may non-competitively award a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate—*e.g.,* the Director may award one temporary contract with a three year term; two consecutive temporary contracts, one with a two year term and one with a one year term; or three consecutive temporary contracts with a term of one year each—to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may be awarded to continue visitor services that were provided under an extended concession contract pursuant to the terms and conditions in this paragraph. A temporary concession contract awarded under the authority of the prior sentence will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(b) [Reserved]

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract that replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under an extended concession contract that was replaced by a temporary concession contract under paragraph (a) of this section.

■ 5. Revise § 51.104 to read as follows:

Subpart M—Information Collection

§ 51.104 Has OMB approved the collection of information?

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this Part and assigned OMB Control No. 1024–0029. We use this information to administer the National Park Service concessions program, including solicitation, award, and administration of concession contracts. A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW. (2601), Washington, DC 20240.

Dated: July 25, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–18416 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–EJ–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. 14–CRB–0005 (RM)]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Extension of Reply Comment Period.

DATES: Reply Comments deadline is extended to September 5, 2014.

SUMMARY: The Copyright Royalty Judges are extending the period for filing reply comments.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys (202) 707–7658 or email at *crb@loc.gov.*

Background

On May 2, 2014, the Copyright Royalty Judges (''Judges'') published a notice of proposed rulemaking (''NPRM'') seeking comment on two petitions for rulemaking. Comments were due by June 2, 2014. Reply comments were due by June 16, 2014. On May 22, 2014, the Judges entered an Order extending the time for comments and reply comments to June 30, and August 11, 2014, respectively.

The Judges were unable to post all of the initial comments until after the first week of July 2014. To afford parties adequate opportunity to respond to the comments, the Judges hereby extend the due date for reply comments to September 5, 2014.

Dated: July 22, 2014.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 2014–18500 Filed 8–4–14; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0100; FRL–9914–64–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Exclusion for De Minimis Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) is proposing to correct final rules pertaining to the State of Montana's State Implementation Plan (SIP). On February 13, 2012, EPA took final action to partially approve and partially disapprove SIP revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. EPA subsequently discovered errors in our February 13, 2012 final action related to the ''incorporation by reference'' materials and the associated regulatory text that inadvertently reversed portions of our July 8, 2011 final action. EPA is proposing to correct those errors with today's action; and we are only seeking comments on these corrections. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 4, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0100, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: dobrahner.jaslyn@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket EPA–R08–OAR–2011–0100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, EPA, Region 8, Mail Code 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6252, *dobrahner.jaslyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

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

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

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

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

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

Table of Contents

I. General Information
II. Background
III. What action is EPA taking?
IV. Statutory and Executive Orders Review

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

3. *Scope of comments.* Although EPA is including the entire regulatory text in this action and the associated proposed incorporation by reference materials (with proposed corrections) so that the public can see the corrections, EPA is only seeking comment on the proposed corrections that are described in this document. Our prior documents provided an opportunity for the public to review and comment on our partial approval and partial disapproval actions regarding these Montana State Implementation Plan regulations. Therefore, we will only address comments regarding the proposed corrections described in this document.

II. Background

In our rule published on February 13, 2012 (77 FR 7531), EPA took final action to partially approve and partially disapprove SIP revisions and new rules as submitted by the State of Montana on June 25, 2010 and May 28, 2003. On page 7534, third column, under the regulatory text in 40 CFR 52.1370(c)(72)(i) Incorporation by reference, paragraph (A), EPA inadvertently incorporated by reference all of Administrative Rules of Montana (ARM), 17.8.740, *Definitions.* We are proposing to amend the regulatory text in 40 CFR 51.1370(c)(72)(i)(A) to specify that EPA only approved the phrase ‘‘, except when a permit is not required under ARM 17.8.745’’ in ARM 17.8.740(8)(a) and the phrase, ‘‘, except as provided in ARM 17.8.745’’ in ARM 17.8.740(8)(c). Therefore, we propose that the regulatory text in 40 CFR 51.1370(c)(72)(i)(A) read as follows: ‘‘Administrative Rules of Montana, 17.8.740, *Definitions,* ARM 17.8.740(8)(a) and (c), respectively, the phrases ‘, except when a permit is not required under ARM 17.8.745’ and ‘, except as provided in ARM 17.8.745’; 17.8.743, *Montana Air Quality Permits—When Required,* (except for the phrase in 17.8.743(1)(b), ‘asphalt concrete plants, mineral crushers, and’, and 17.8.743(1)(c)); and 17.8.764, *Administrative Amendment to Permit,* effective 12/27/2002.’’

This proposed correction is consistent with: (1) The preamble of our February 13, 2012 final rule (77 FR 7531, 7534); and (2) the July 8, 2011 final rule (76 FR 40237) and associated regulatory text found in 40 CFR 52.1370(c)(70)(i)(B)(2) where we disapproved the phrase in ARM 17.8.740(2) ‘‘includes a reasonable period of time for startup and shakedown and’’ and the definitions in ARM 17.8.740(10) and (14), ‘‘Negligible risk to the public health, safety, and welfare and to the environment’’ and ‘‘Routine Maintenance, repair, or replacement,’’ respectively. We also confirm that our approval of the phrase ‘‘unless the increase meets the criteria in ARM 17.8.745 for a *de minimis* change not requiring a permit, or’’ in 17.8.764(1)(b) of our July 8, 2011 final rule (76 FR 40237) is accurate, while the same phrase in the preamble of the July 8, 2011 and February 13, 2012 final rules is incorrect.

In this action, EPA is also proposing to correct the associated IBR material for our February 13, 2012 (77 FR 7531) rule by striking out the aforementioned phrases (ARM 17.8.740(2), ARM 17.8.743(1)(c)) and two definitions (ARM 17.8.740(10), ARM 17.8.740(14)) that were inadvertently included in the IBR SIP material from the State’s May 28, 2003 submittal; and the proposed corrected IBR material appears in the docket for this action.

For more detailed information regarding these February 13, 2012 and July 8, 2011 actions, see 77 FR 7531 and 76 FR 40237.

III. What action is EPA taking?

EPA is proposing to amend the text in 40 CFR 51.1370(c)(72)(i)(A) to read as follows: ‘‘Administrative Rules of Montana, 17.8.740, *Definitions,* ARM

17.8.740(8)(a) and (c), respectively, the phrases ', except when a permit is not required under ARM 17.8.745' and ', except as provided in ARM 17.8.74'; 17.8.743, *Montana Air Quality Permits—When Required,* (except for the phrase in 17.8.743(1)(b), 'asphalt concrete plants, mineral crushers, and', and 17.8.743(1)(c)); and 17.8.764, *Administrative Amendment to Permit,* effective 12/27/2002.''

IV. Statutory and Executive Orders Review

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

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

In addition, this 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.

List of Subjects in 40 CFR Part 52

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

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

Date: July 15, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2014–18492 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0169; FRL–9914–69-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County; Control of Outdoor Wood-Fired Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a submission by the Commonwealth of Pennsylvania for two State Implementation Plan (SIP) revisions in accordance with the requirements of the Clean Air Act (CAA). These revisions pertain to the control of particulate matter (PM) emissions from the operation of outdoor wood-fired boilers (OWBs) in Allegheny County.

DATES: Written comments must be received on or before September 4, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0169 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0169, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0169. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 15, 2014, the Pennsylvania Department of Environmental Protection (PADEP) submitted two SIP revisions to the Allegheny County portion of the Pennsylvania SIP for the control of PM emissions from the operation of OWBs.

I. Background

OWBs are free-standing fuel burning devices designed (1) to burn clean wood or other approved solid fuels, (2) specifically for outdoor installation or installation in structures not normally intended for habitation by humans or domestic animals, such as garages and, (3) to heat building space or water by means of distribution, typically through pipes, of a fluid heated in the device, typically water, or a water and antifreeze mixture.

A concern associated with certain OWBs is the air pollution they may produce. Smoldering fires and short smokestacks may create heavy smoke which falls to the ground and sometimes causes a neighborhood nuisance or an adverse impact on public health and the environment. Unlike indoor wood stoves, which are regulated by EPA, OWBs are not currently required to meet a Federal emission standard, and the majority of them are not equipped with pollution controls. To improve air quality, EPA initiated a voluntary program that encourages manufacturers of OWBs to develop and distribute cleaner-burning, more efficient OWBs. Through this voluntary effort, OWBs are certified and labeled to meet EPA performance levels. Additional information about the EPA voluntary OWB program is available on EPA's Web site at *www.epa.gov/burnwise.*

Furthermore, the Northeast States for Coordinated Air Use Management (NESCAUM), a regional air pollution control organization comprised of the air program directors of several states, developed a model regulation for regulating OWBs in coordination with a number of states and EPA. The purpose of the model regulation is to assist state and local agencies in adopting requirements that will reduce air pollution from OWBs. The model regulation establishes emission limits and labeling requirements for new OWBs and contains the following components for both new and existing OWBs: Stack height requirements, distributor and buyer notification requirements, and setback requirements from property lines, structures, and homes.

On May 2, 2012, the Allegheny County Health Department (ACHD) proposed two regulations, with a number of ''health enhancing'' changes, to be submitted to EPA for approval into the Allegheny County portion of the Pennsylvania SIP. These proposed regulations were based on Chapters 123.14 (Outdoor Wood-Fired Boilers) and 121.1 (Definitions) of Title 25 of the Pennsylvania Code (Pa. Code) as issued in Pa. Bulletin 5571 on October 2, 2010. The proposed regulations were approved and subsequently became effective on June 8, 2013. On January 15, 2014, PADEP submitted the regulations as revisions to EPA for approval to the Allegheny County portion of the Pennsylvania SIP.

II. Summary of SIP Revision

The SIP revisions consist of (1) adding Section 2104.09 (Outdoor Wood-Fired Boiler) to Article XXI, ''Air Pollution Control Rules and Regulations'' and (2) adding new related definitions to Section 2101.20 (Definitions) of Article XXI.

The first SIP revision adds Section 2104.09 which is based upon the PADEP regulations, with the exception of minor ''health enhancing'' changes, contained in 25 Pa. Code 123.14 (Outdoor Wood-Fired Boilers). The minor changes include: Increased setbacks, additional stack height criteria, use restrictions, and the addition of reporting requirements. These minor changes are required in order to tailor the OWB regulations to the specific situations in Allegheny County. The second SIP revision adds certain related definitions of 25 Pa. Code Chapter 121.1 (Definitions) to Section 2101.20 of Article XXI. A detailed summary of EPA's review and rationale for approving Pennsylvania's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2014–0169.

III. Proposed Action

EPA is proposing to approve the Pennsylvania SIP revisions consisting of (1) the addition of Section 2104.09 (Outdoor Wood-Fired Boilers) of Article XXI, ''Air Pollution Control Rules and Regulations'' and (2) the addition of related new definitions to Section 2101.20. These revisions are being made for the control of OWBs, and were submitted to EPA for approval on January 15, 2014. EPA's review of this material indicates that the SIP revisions will reduce the problems associated with the operation of OWBs, including smoke, odors and burning prohibited fuels, including garbage, tires, and hazardous waste. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. 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 proposed action:

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

application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 16, 2014.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–18493 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11–154; FCC 14–97]

Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010; Closed Captioning of Internet Protocol-Delivered Video Clips

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on issues related to closed captioning of video clips delivered using Internet protocol (''IP''). The Commission explores application of the IP closed captioning rules for video clips to third party distributors not currently subject to the new video clips requirements. The Commission also asks whether it should decrease or eliminate the grace periods within which IP-delivered video clips of video programming previously shown live or near-live on television must be captioned. Further, the Commission invites comment on application of the IP closed captioning requirements to two additional categories of video clips, which are called ''mash-ups'' and ''advance'' video clips.

DATES: Comments are due on or before October 6, 2014; reply comments are due on or before November 3, 2014.

ADDRESSES: You may submit comments, identified by MB Docket No. 11–154, by any of the following methods:

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

• Federal Communications Commission's Web site: *fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking (2nd FNPRM),* FCC 14–97, adopted on July 11, 2014 and released on July 14, 2014. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This *2nd FNPRM* seeks comment on a potential new or revised information collection requirement. If the Commission adopts a new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

I. Introduction

1. In the Second Order on Reconsideration (''*Video Clips Order*''), the Commission concludes that clips of video programming covered by the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA'') must be captioned when delivered using Internet protocol (''IP'') and adopts rules in that regard. The attached *2nd FNPRM* explores the following four issues related to closed captioning of IP-delivered video clips:

• Application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors;

• Whether in the future we should decrease or eliminate the 12-hour timeframe within which IP-delivered video clips of video programming previously shown live on television must be captioned and the eight-hour timeframe within which IP-delivered video clips of video programming previously shown near-live on television must be captioned;

• Application of the IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions and online-only content that has not (''mash-ups''); and

• Application of the IP closed captioning rules to video clips that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions (''advance'' video clips).

II. Second Further Notice of Proposed Rulemaking

2. In the following *2nd FNPRM* we explore four issues related to closed captioning of IP-delivered video clips: (1) Application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors, when the associated video programming has been shown on television with captions; (2) whether in the future we should decrease or eliminate the 12-hour timeframe within which captions may be added to IP-delivered video clips of live programming and the eight-hour timeframe within which captions may be added to IP-delivered video clips of near-live programming; (3) application of the IP closed captioning requirements to files that contain a combination of video clips that have been shown on television with captions and online-only content (''mash-ups''); and (4) application of the IP closed captioning rules to video clips that are first added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips or January 1, 2017 for montages, but before the associated video programming is shown on television with captions, and which then remain online in the distributor's or provider's library after being shown on television.

A. Third Party Video Programming Providers and Distributors

3. Entities such as news Web sites that do not distribute full-length video programming may sometimes make video clips available on their Web sites. In addition, some entities, such as Hulu, may distribute full-length video programming online but do not also distribute such programming on television. We do not have an adequate record for purposes of applying the IP closed captioning rules to the provision of video clips by these and similar entities, which we refer to as ''third party'' distributors.[1] Accordingly, we seek comment on the scope of third party IP distribution of video clips that were taken from video programming shown on television with captions, the relationship between such third parties and the video programming owner, and the costs and benefits of imposing the obligation to caption video clips on such entities, including small entities.

4. We seek comment on the third parties that distribute video clips of video programming shown on television with captions. What types of entities are included in this category, and how many such entities exist? We request information on the relationship between these third parties and video programming owners. Do the third parties receive video clips directly from the video programming owner, or do they receive video clips for IP distribution in a different manner? What licensing or other agreements exist between video programming owners and these third party video programming providers and distributors with regard to IP-delivered video clips? Do video programming owners sometimes lack knowledge that third parties are distributing their video clips via IP, and in what circumstances might that occur? Should any rules covering third party distributors be limited to those distributors that have a licensing or other formal agreement with the video programming owner?

5. How should we ensure that video clips taken from programming shown on television are successfully captioned by third party distributors on a timely basis? For example, the general IP closed captioning rules that apply to full-length programming require video programming owners to send program files to video programming distributors and providers with required captions, and they require video programming providers and distributors to enable the rendering or pass through of all required captions to the end user. Should we impose this allocation of responsibility for IP-delivered video clips when the video programming provider or distributor did not also publish or exhibit the associated video programming on television? Should we impose the general IP closed captioning rules in this context, or should we impose any differing obligations? For example, the IP closed captioning rules require each video programming owner to agree ''[w]ith each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol . . . upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.''[2] How would this ''mechanism'' operate in the context of video clips covered by these rules when they are provided to third party IP distributors? How will third party video programming providers and distributors be informed that a video clip already in their library has been shown on television with captions? Will the video programming owner always know that a video clip previously shown as part of television programming has been posted online and by whom? How should this impact enforcement, if at all?

6. If video clips are initially posted online by a third party distributor without captions and later amended to include captions, will links to the original posting of the video clip still work? What other technical, legal or other issues should we be aware of that may impact the ability of third party video programming distributors to comply with our IP closed captioning requirements, and how quickly can they be addressed? We seek comment on what would be an appropriate compliance period. We also seek comment on what obligations, if any, should be different when a third party distributor embeds instead of hosts the content on its Web site.[3]

7. We seek comment on our statutory authority over video clips provided by third party distributors. As explained in the *Video Clips Order* (published concurrently with this *2nd FNPRM* in the **Federal Register**), the CVAA requires that any IP-delivered video programming that was shown on television with captions, whether full-length or an excerpt, must also be captioned when delivered using IP. What requirements do we need to impose in the context of third party distributors to ensure that we are fulfilling the requirements and goals of the CVAA, which directs the Commission to require ''the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date of such regulations''?[4] Do any statutory exemptions apply in this context? For example, should the Commission exempt any third party video programming distributors or categories of distributors from its video

[1] The *Video Clips Order* imposes closed captioning requirements for IP-delivered video clips, at the present time, to instances in which the video programming provider or distributor (as those terms are defined in the IP closed captioning rules) posts on its Web site or app a video clip of video programming that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline. References herein to ''third party'' distributors should be read to include all video programming providers and distributors not subject to the *Video Clips Order* as a result of this limitation.

[2] 47 CFR 79.4(c)(1)(ii).

[3] When a third party video programming distributor ''embeds'' a video clip, it is directing the consumer's browser or video player to display a video that is currently hosted on another video programming distributor's platform. When a third party video programming distributor ''hosts'' a video clip, it is both directing the consumer's browser or video player to display the video and providing the video file itself.

[4] 47 U.S.C. 613(c)(2)(A).

clips captioning obligations on the basis that it would be ''economically burdensome'' for these distributors to comply? [5] If so, parties should provide specific reasons for why the economic burden exemption should apply.[6] If adopted, should such categorical exemption expire after a set period of time, subject to renewal if warranted?

B. Grace Period for Live and Near-Live Video Clips

8. As explained in the *Video Clips Order,* beginning July 1, 2017 we require the provision of closed captions on IP-delivered video clips of video programming previously shown live or near-live on television with captions within 12 hours and eight hours, respectively, after the associated video programming is published or exhibited on television in the United States with captions. Herein we seek comment on whether in the future we should decrease or eliminate this grace period for providing captions. We seek comment on the costs of imposing a shorter grace period on covered entities, including small entities, in comparison to the benefits to consumers of a reduced grace period.

9. We remain concerned about the impact that delayed access to IP-delivered video clips of live and near-live programming will have on people who are deaf and hard of hearing. For example, breaking news aired live on television and initially posted online without closed captions effectively excludes these individuals from having timely access to this information. We seek comment on the impact that these delays will have on people who are deaf and hard of hearing and whether continuing to allow these delays is consistent with Congress's intent, as expressed in the CVAA, to improve access to video programming delivered via the Internet. We also expect that, at some time in the future, it will be appropriate to decrease or eliminate this grace period because we expect that technology will automate the process such that a grace period is no longer needed. We invite comment on the timeframe within which we should decrease or eliminate the grace period applicable to video clips of live and near-live programming. For example, for video clips of live programming, should we provide a grace period of six hours beginning July 1, 2018, and three hours beginning July 1, 2019? What adjustments should we make to the grace period for video clips of near-live programming? We ask commenters to justify any differing treatment of video clips of live programming and video clips of near-live programming. We also ask industry to submit specific comment on the status of technological developments in this regard. What steps must industry currently take to prepare captioned video clips of live and near-live programming, and how and when might those steps be streamlined in the future? To the extent that these delays can be reduced, would it be appropriate to adopt a schedule of deadlines phasing in shorter grace periods, and if so, what should these deadlines be? Would a schedule phasing out these grace periods encourage greater technical innovation to automate these captioning processes, as well as provide the necessary time to achieve compliance?

C. Combinations of Video Clips and Content Not Televised With Captions (''Mash-Ups'')

10. We seek comment on the application of the IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions, and other content (such as online-only content) that has not been shown on television with captions. The industry refers to these files as ''mash-ups.'' We seek comment on the costs to covered entities, including small entities, and the benefits of applying the IP closed captioning requirements to mash-ups. We seek additional information on issues associated with the captioning of the portion of the clip that was shown on television with captions. We recognize that any part of the video clip that was not shown on television with captions, such as online-only content, would not be subject to the IP closed captioning requirements.

11. As explained in the *Video Clips Order,* the CVAA requires that any IP-delivered video programming that was shown on television with captions, whether full-length or an excerpt, must also be captioned when delivered using IP. Is there any statutory basis on which we could exclude from the IP closed captioning requirements video clips embedded in mash-ups if the embedded clips were shown on television with captions? We seek comment on whether this type of clip is subject to any of the exemptions set forth in section 202 of the CVAA. For example, if the clips that were shown on television with captions were very short or insignificant in comparison to the rest of the mash-up that contains online-only content, would the lack of captions be considered a ''de minimis'' failure to comply under section 202? If so, how would the Commission be able to determine what is a ''de minimis'' situation versus one where lack of captions is considered a violation of our regulations? That is, what would constitute an insignificant or short enough clip sufficient to invoke the ''de minimis'' exemption? Alternatively, should the Commission exempt the class of ''mash-ups'' from its IP closed captioning rules on the basis that it would be ''economically burdensome'' for the provider of such clip to comply with our rules? [7] If adopted, should such categorical exemption expire after a set period of time, subject to renewal if warranted? Parties should provide specific comment on why the Commission's economic burden test would apply in this situation and how the Commission should apply this test to this class exemption, if adopted. Is there any other basis on which the Commission can exclude an otherwise covered video clip from the IP closed captioning rules, consistent with the CVAA's direction that the Commission ''require the provision of closed captioning on video programming delivered using Internet protocol that was published or exhibited on television with captions after the effective date''? [8] For example, if an online program itself was not shown on television with captions, but rather only isolated clips embedded in the program were, does that render the program in its entirety (including integrated clips of televised captioned programming) outside the scope of the CVAA on the theory that the whole program is a new work that does not constitute ''video

[5] 47 U.S.C. 613(c)(2)(D)(ii) (the regulations ''may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment'').

[6] *Closed Captioning and Video Description of Video Programming,* Report and Order, 13 FCC Rcd 3272, 3342, paras. 143–145 (1997) (setting forth the Commission's treatment of class exemptions); *See Anglers for Christ Ministries, Inc.,* Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14941, 14958–60, paras. 33–36 (2011) (explaining the different application of the term ''economically burdensome'' to case-by-case exemptions than to rulemaking decisions to exempt certain categories of programming''); *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 27 FCC Rcd 787, 828, para. 67 (2012) (''*IP Closed Captioning Order*'') (also noting the distinction between the Commission's treatment of these two types of captioning exemptions.

[7] 47 U.S.C. 613(c)(2)(D)(ii) (the regulations ''may exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment'').

[8] *See* 47 U.S.C. 613(c)(2)(A).

programming . . . that was published or exhibited on television with captions''?

12. We seek comment on the nature of these types of integrated clips. Industry should give us specific examples of such clips and describe how prevalent they are. If the Commission applies the IP closed captioning requirements to one or more video clips that have been shown on television with captions, regardless of whether these clips are integrated with other content (such as online-only content) that has not been shown on television with captions, how will industry comply with such a requirement? That is, we seek comment on the technical challenges associated with captioning such clips. Will industry need to caption the covered material anew, or will it be able to repurpose televised captions? What would be an appropriate compliance deadline for captioning of covered clips included in mash-ups? Would video programming providers and distributors need a grace period for captioning the covered clips in mash-ups following the airing of the associated video programming on television with captions and, if so, what grace period would be appropriate?

D. Advance Video Clips

13. As stated in the *Video Clips Order,* we find that further information on the technological challenges of captioning advance video clips would be useful before we proceed with requiring closed captioning for such clips. Accordingly, we invite comment on application of the IP closed captioning rules to advance video clips. ''Advance'' video clips are video clips that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, when the associated video programming (including the advance video clips) is later shown on television with captions on or after the compliance deadline and the advance video clips remain online.[9] We defer application of the IP closed captioning requirements to advance video clips pending resolution of this issue. We seek comment on the costs to covered entities, including small entities, and the benefits of captioning advance video clips.

14. We understand that video programming distributors and providers sometimes add video clips to their libraries shortly before the associated video programming is shown on television with captions, and we think it is important that IP-delivered advance video clips be made accessible to consumers who are deaf or hard of hearing once the programming associated with such clips has been shown on television with captions. For example, if a broadcast television station places a clip filmed on location earlier in the day on its Web site shortly before the station's nightly news program, and then the clip is shown on television with captions as part of the program, we are concerned that consumers who are deaf or hard of hearing would not have access to the content of the clip if it remains uncaptioned online.[10] Accordingly, we ask whether we should provide a timeframe within which closed captions may be added to IP-delivered advance video clips, once the associated video programming is shown on television with captions. For example, would 24 hours be an appropriate timeframe for the grace period? If not, what timeframe would balance consumers' desire for prompt access to IP-delivered advance video clips and industry's need for time to identify and provide captions on IP-delivered advance video clips? Should we adopt an initial timeframe for the grace period, and then decrease or eliminate it over time, in recognition of the expectation that technology will automate the process such that a grace period will no longer be needed? What compliance deadline should we impose for advance clips? We note that in the *IP Closed Captioning Order* (77 FR 19480, Mar. 30, 2012), the Commission gave entities a phased-in timeframe for compliance with respect to the captioning of full-length programming that is in the video programming provider or distributor's online library before it is shown on television with captions. Should a similar approach be adopted here? What is the scope of the advance clips under consideration? For example, should the scope include all advance clips, or should it be limited to clips posted online within a certain timeframe, such as seven days, before the associated video programming is shown on television? How would any such limitation be consistent with the CVAA? For what time period should video programming owners, providers, and distributors be required to monitor the posting of the advance clip online and the associated video programming on television? If a commenter proposes a period of time, we seek additional comment on the justification for such proposal, including the costs to industry and the benefits to consumers, including consumers who are deaf or hard of hearing.

15. What is the nature and extent of the difficulties associated with captioning advance clips after their associated video programming has been shown on television with captions? To what extent and for how long does the industry expect that these technological challenges will continue to hinder captioning this category of IP-delivered video clips? In the *IP Closed Captioning Order,* the Commission required closed captioning of full-length video programming that is in the provider's or distributor's library before it is shown on television with captions, but it extended the deadlines applicable to such programming in recognition of the need to develop processes for finding and adding captions to this category of programming.[11] How should the Commission justify any differing treatment of advance IP-delivered video clips? Are any differences in treatment justified by Hulu's assertion that ''clips have a shorter shelf life for viewership than long-form content,'' or are Consumer Groups correct that many video clips ''are likely to live on the Internet indefinitely''? For purposes of quantifying the burden and difficulty in captioning such clips after they appear on television with captions after the applicable deadline, we seek comment on the likely volume of advance video clips in providers' online libraries. How would the ''mechanism'' referenced above apply in the context of such video clips, and how would third party video programming distributors and providers comply with a requirement to caption them? What is the likelihood that a requirement to caption advance video clips will result in the removal of these clips and should that factor into our analysis?

16. Even if advance clips are not excerpts of programs shown on television with captions at the time they are initially posted online, we invite comment on whether their status changes once the associated video programming is shown on television with captions thus triggering the captioning requirement. Are there any

[9] We clarify that, if a video programming distributor or provider posts an advance video clip online, and then re-posts that video clip online after the programming is shown on television with captions on or after the compliance deadline, the reposted version of the clip would not be considered an advance clip since it was not posted before the programming was shown on television with captions.

[10] Accordingly, we disagree with NCTA that ''[a]ny rule must exclude these 'advance' clips from a captioning obligation, and should leave to the reasonable judgment of the programmers whether the 'advance clip' retains value such that replacing it with a captioned version makes sense after the program airs on television with captions.''

[11] Additionally, instead of requiring captions immediately as is otherwise the case, the Commission adopted permissible timeframes between the posting of the program file and updating it to include closed captions.

statutory exemptions that would apply to these clips or to a subset of these clips? [12] How would the costs of compliance with such a captioning requirement for advance clips compare to the benefits to consumers? We ask video programming providers and distributors to provide information on their standard practices for removing video clips previously posted online. Do video clips tend to remain online indefinitely, and if so, why? What aspects of the practices now used to post and maintain clips online would need to be changed to comply with the imposition of closed captioning requirements for advance video clips?

III. Procedural Matters

A. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the *2nd FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the item. The Commission will send a copy of the *2nd FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *2nd FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Second Further Notice of Proposed Rulemaking

18. In the Second Order on Reconsideration attached to the *2nd FNPRM,* as part of the Commission's continued implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), the Commission imposes closed captioning requirements on excerpts of video programming, specifically online video clips. In the *2nd FNPRM* attached to that order, the Commission explores the following four issues related to closed captioning of video clips delivered via Internet protocol (''IP''):

- Application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors;
- Whether in the future we should decrease or eliminate the 12-hour timeframe within which IP-delivered video clips of video programming previously shown live on television must be captioned and the eight-hour timeframe within which IP-delivered video clips of video programming previously shown near-live on television must be captioned;
- Application of the IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions and online-only content that has not (''mash-ups''); and
- Application of the IP closed captioning rules to video clips that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips [13] and January 1, 2017 for montages,[14] but before the associated video programming is shown on television with captions (''advance'' video clips).

2. Legal Basis

19. The proposed action is authorized pursuant to sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613.

3. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

20. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules proposed in the *Second Order on Reconsideration.* The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Small entities that may be directly affected by the proposals in the *2nd FNPRM* are those entities that distribute IP-delivered clips of video programming and the owners of such programming. Such small entities may include television broadcasters, multichannel video programming distributors (MVPDs), programmers, and other entities that own or distribute video programming. Below are descriptions of the small entities that may be affected by the rules proposed in the *2nd FNPRM,* including, where feasible, an estimate of the number of such small entities. In addition, because the *2nd FNPRM* considers application of the IP closed captioning rules to the provision of video clips by third party video programming providers and distributors, and because of the difficulty of identifying all such third party video programming providers and distributors, we seek specific comment on whether such small entities are covered by the categories listed below and, if not, on how to identify and estimate such small entities.

21. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, according to the SBA Office of Advocacy, in 2010, there were 27.9 million small businesses in the United States. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, a substantial majority may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

22. *Wired Telecommunications Carriers.* The North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired

[12] For example, we note that the statute permits exemptions due to economic burden. *See* 47 U.S.C. 613(c)(2)(D)(ii) (permitting the Commission's implementing regulations to ''exempt any service, class of service, program, class of program, equipment, or class of equipment for which the Commission has determined that the application of such regulations would be economically burdensome for the provider of such service, program, or equipment'').

[13] ''Straight lift'' clips are those that contain a single excerpt of a captioned television program with the same video and audio that was presented on television.

[14] ''Montages'' contain multiple straight lift clips.

telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms for the broad economic census category of ''Wired Telecommunications Carriers.'' Under this category, a wireline business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

23. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

24. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. According to SNL Kagan, there are 1,258 cable operators. Of this total, all but 10 incumbent cable companies are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,584 cable systems nationwide. Of this total, 4,012 cable systems have fewer than 20,000 subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

25. *Cable System Operators* (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but 10 incumbent cable operators are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

26. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled ''Cable and Other Program Distribution.'' The definition of Cable and Other Program Distribution provided that a small entity is one with $12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each reports annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

27. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated for the entire year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

28. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows

that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

29. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

30. *Wireless cable systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

31. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

32. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small.

33. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

34. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees. Therefore, under this size

standard, the majority of such businesses can be considered small.

35. *Television Broadcasting.* This economic census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' The SBA has created the following small business size standard for Television Broadcasting businesses: Those having $35.5 million or less in annual receipts. Census data for 2007 shows that 2,076 establishments in this category operated for the entire year. Of this total, 1,515 establishments had annual receipts of $10,000,000 or less, and 561 establishments had annual receipts of more than $10,000,000. Because the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $35.5 million in that year, the majority of such establishments can be considered small under this size standard.

36. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,388 stations. Of this total, 1,221 stations (or about 88 percent) had revenues of $35.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of television broadcast stations are small entities.

37. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

38. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such businesses having $35.5 million or less in annual revenues. Census data for 2007 shows that there were 659 establishments that operated for the entire year. Of that number, 462 operated with annual revenues of fewer than $10 million, and 197 operated with annual revenues of $10 million or more. Therefore, under this size standard, the majority of such businesses can be considered small.

39. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce programming for cable television. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The SBA has developed a small business size standard for this category, which is: Those having $30 million or less in annual receipts. Census data for 2007 shows that there were 9,095 firms in this category that operated for the entire year. Of this total, 8,995 firms had annual receipts of fewer than $25 million, and 43 firms had receipts of $25 million to $49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

40. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms distribute programming for cable television. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. The SBA has developed a small business size standard for this category, which is: Those having $29.5 million or less in annual receipts. Census data for 2007 shows that there were 450 firms in this category that operated for the entire year. Of this total, 434 firms had annual receipts of fewer than $25 million, and 7 firms had receipts of $25 million to $49,999,999. Therefore, under this size standard, the majority of such businesses can be considered small.

41. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 500 or fewer employees. Census data for 2007 shows that there were 2,705 firms that operated for the entire year. Of this total, 2,682 firms had fewer than 500 employees, and 13 firms had between 500 and 999 employees. Therefore, under this size standard, the majority of such businesses can be considered small.

42. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile

communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that there were 939 establishments that operated for part or all of the entire year. Of this total, 912 establishments had fewer than 500 employees, and 10 establishments had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

43. *Audio and Video Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems.'' The SBA has developed a small business size standard for this category, which is: All such businesses having 750 or fewer employees. Census data for 2007 shows that 492 establishments in this category operated for part or all of the entire year. Of this total, 488 establishments had fewer than 500 employees, and three had between 500 and 999 employees. Therefore, under this size standard, the majority of such establishments can be considered small.

44. *Closed Captioning Services.* These entities may be indirectly affected by our proposed actions. The SBA has developed two small business size standards that may be used for closed captioning services. The two size standards track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

45. The first category of *Teleproduction and Other Postproduction Services* ''comprises establishments primarily engaged in providing specialized motion picture or video postproduction services, such as editing, film/tape transfers, subtitling, credits, closed captioning, and animation and special effects.'' The SBA has developed a small business size standard for this category, which is: Those having $29.5 million or less in annual receipts. Census data for 2007 indicates that there were 1,605 firms that operated in this category for the entire year. Of this total, 1,587 firms had annual receipts of fewer than $25 million, and 9 firms had receipts of $25 million to $49,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

46. The second category of *Court Reporting and Stenotype Services* ''comprises establishments primarily engaged in providing verbatim reporting and stenotype recording of live legal proceedings and transcribing subsequent recorded materials.'' The SBA has developed a small business size standard for this category, which is: Those having $14 million or less in annual receipts. Census data for 2007 indicates that there were 2,706 firms that operated in this category for the entire year. Of this total, 2,687 had annual receipts of fewer than $10 million, and 11 firms had receipts of $10 million to $24,999,999. Therefore, we estimate that the majority of firms in this category are small entities.

47. *Newspaper Publishers.* The Census Bureau defines this category as follows: ''This industry comprises establishments known as newspaper publishers. Establishments in this industry carry out operations necessary for producing and distributing newspapers, including gathering news; writing news columns, feature stories, and editorials; and selling and preparing advertisements.'' The SBA has developed a small business size standard for this category, which is: Those having 500 or fewer employees. Census data for 2007 shows that there were 4,852 firms in this category that operated for the entire year. Of this total, 4,771 firms had fewer than 500 employees, and an additional 33 firms had between 500 and 999 employees. Therefore, we estimate that the majority of firms in this category are small entities.

48. *Periodical Publishers.* The Census Bureau defines this category as follows: ''This industry comprises establishments known either as magazine publishers or periodical publishers. These establishments carry out the operations necessary for producing and distributing magazines and other periodicals, such as gathering, writing, and editing articles, and selling and preparing advertisements.'' The SBA has developed a small business size standard for this category, which is: Those having 500 or fewer employees. Census data for 2007 shows that there were 5,479 firms in this category that operated for the entire year. Of this total, 5,434 firms had fewer than 500 employees, and an additional 25 firms had between 500 and 999 employees. Therefore, we estimate that the majority of firms in this category are small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

49. Certain proposals discussed in the *2nd FNPRM* would affect reporting, recordkeeping, or other compliance requirements.

50. The *2nd FNPRM* considers four issues related to the extension of the IP closed captioning requirements to video clips as discussed in the *Video Clips Order.* First, the *2nd FNPRM* seeks comment on application of the IP closed captioning requirements to ''third party'' video programming providers and distributors, which are those not subject to the *Video Clips Order.*[15] Third party distributors include entities, such as news Web sites, that do not distribute full-length video programming but may sometimes make video clips available on their Web sites. Third party distributors also include entities, such as Hulu, that distribute full-length video programming online but do not also distribute such programming on television. The *2nd FNPRM* asks whether the Commission should impose the general IP closed captioning rules to such third parties, or whether any differing obligations should apply. For example, the IP closed captioning rules require each video programming owner, ''[w]ith each video programming distributor and provider that such owner licenses to distribute video programming directly to the end user through a distribution method that uses Internet protocol, [to] agree upon a mechanism to inform such distributors and providers on an ongoing basis whether video programming is subject to the requirements of this section.''[16] The *2nd FNPRM* asks how this ''mechanism'' would operate in the context of video clips covered by these rules when they are provided to third party IP distributors. Extension of the IP closed captioning requirements for video clips to third party distributors that are small entities will subject these entities to the video clips requirements. Second, the Commission seeks comment on decreasing or eliminating the grace period adopted in the *Video Clips Order* for providing closed captions on IP-delivered video clips of video

[15] The *Video Clips Order* imposes closed captioning requirements for IP-delivered video clips, at the present time, to instances in which the video programming provider or distributor (as those terms are defined in the IP closed captioning rules) posts on its Web site or application a video clip of video programming that it published or exhibited on television in the United States with captions on or after the applicable compliance deadline.

[16] 47 CFR 79.4(c)(1)(ii).

programming previously shown live or near-live on television with captions. Decreasing or eliminating this grace period would require all entities, including smaller entities, to make captions available more quickly for video clips of live and near-live programming. Third, the *2nd FNPRM* asks about application of the Commission's IP closed captioning requirements to files that contain a combination of one or more video clips that have been shown on television with captions and other content (such as online-only content) that has not been shown on television with captions (''mash-ups''). Extension of the IP closed captioning requirements to mash-ups will require all entities, including small entities, to comply with the requirements for an additional type of video clip. Fourth, the Commission seeks comment on application of the IP closed captioning rules to ''advance'' video clips, which are those that are added to the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions on or after the compliance deadline. Extension of the IP closed captioning requirements to advance video clips also will require all entities, including small entities, to comply with the requirements for an additional type of video clip.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

52. Similar to the rules promulgated in the accompanying *Second Order on Reconsideration (''Video Clips Order''),* the proposals contained in the *2nd FNPRM,* if adopted, could have a significant economic impact on a substantial number of small entities. Although the Commission has considered (and will continue to consider) alternatives, where possible, to minimize economic impact on small entities, we note that our proposals in the *2nd FNPRM* are governed by the congressional mandate contained in the CVAA. We note that in the *2nd FNPRM,* the Commission seeks comment on the costs and benefits of the proposals on affected entities, including small entities.

53. As explained in the Final Regulatory Flexibility Analysis (FRFA) for the accompanying *Video Clips Order,* as well as the FRFA for the *IP Closed Captioning Order,* we note that the same aspects of the IP closed captioning rules applicable to full-length programming that ease compliance burdens on small entities also apply to small entities in the context of video clips. Specifically, in the *IP Closed Captioning Order,* the Commission adopted procedures enabling it to grant exemptions to the rules governing closed captioning of IP-delivered video programming pursuant to section 202 of the CVAA, where a petitioner has shown that compliance would present an economic burden (*i.e.,* a significant difficulty or expense), and pursuant to section 203 of the CVAA, where a petitioner has shown that compliance is not achievable (*i.e.,* cannot be accomplished with reasonable effort or expense) or not technically feasible. As was the case with regard to full-length programming, this exemption process will allow the Commission to address the impact of any rule revisions resulting from the *2nd FNPRM* on individual entities, including smaller entities, and to modify the application of the rules to accommodate individual circumstances. Further, as with full-length IP-delivered video programming, a *de minimis* failure to comply with the requirements adopted pursuant to section 202 of the CVAA with regard to IP-delivered video clips will not be treated as a violation, and parties may continue to use alternate means of compliance to the rules adopted pursuant to either section 202 or section 203 of the CVAA. Individual entities, including smaller entities, may benefit from these provisions.

54. The *2nd FNPRM* itself also reflects our consideration of small entities and significant alternatives. First, the *2nd FNPRM* seeks comment on what types of entities are included in the category of third parties that distribute video clips of programming shown on television with captions. The Commission also asks if it should impose general IP closed captioning rules in the context of such third parties, or if it should impose different obligations. These concerns will allow the Commission to look into the impact of the requirements on smaller entities and to explore alternatives. For example, the Commission will consider whether the closed captioning requirements for video clips should apply to all third party distributors, or whether comments demonstrate that the application to certain small third party distributors would be economically burdensome.

55. Second, the *2nd FNPRM* seeks comment on decreasing or eliminating the grace period applicable to captions of IP-delivered video clips of live and near-live programming. Specifically, beginning July 1, 2017, the Commission requires the provision of closed captions on IP-delivered video clips of video programming previously shown live or near-live on television with captions within 12 hours (for live) or eight hours (for near-live) after the associated video programming is published or exhibited on television in the United States with captions. The Commission expects that at some time in the future, technology will automate the process such that the grace period for captioning is no longer needed. The Commission seeks comment on the status of technological developments in this regard and the current process through which entities prepare video clips of live and near-live programming. This information will allow the Commission to consider the impact of decreasing or eliminating the grace period on all covered entities, including small entities. The Commission thus will determine whether it should decrease or eliminate the grace period, and it will consider comments submitted about the impact of doing so on small entities.

56. Third, the *2nd FNPRM* seeks comment on applying the IP closed captioning requirements to files that contain a combination of one or more video clips that have been televised with captions and other content (such as online-only content) that has not been shown on television with captions (''mash-ups''). The Commission asks how the industry would comply with such a requirement and whether it will need to caption the covered material anew or simply repurpose televised captions. Thus, the Commission will continue to consider the impact of its rules on covered entities, including small entities, in adopting any rule revisions. A captioning requirement for mash-ups will require all entities, including smaller entities, to caption an additional category of video clips.

57. Fourth, the *2nd FNPRM* seeks comment on applying the IP closed captioning rules to ''advance'' video clips, which are those that are added to

the video programming distributor's or provider's library on or after January 1, 2016 for straight lift clips and January 1, 2017 for montages, but before the associated video programming is shown on television with captions on or after the compliance deadline. The Commission seeks comment on the difficulties associated with a captioning requirement for this category of video clips, including whether any statutory exemptions might apply to these clips or to a subset of these clips. The information provided in response will facilitate the Commission's consideration of the impact of application of the IP closed captioning rules to this category of video clips on covered entities, including small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

58. None.

B. Paperwork Reduction Act

59. The *2nd FNPRM* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

C. Ex Parte Rules

60. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § e 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

61. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

62. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

63. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

E. Additional Information

64. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

IV. Ordering Clauses

65. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, and 613, this *Second Further Notice of Proposed Rulemaking is adopted.*

66. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Further Notice of Proposed Rulemaking* in MB Docket No. 11–154, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–18201 Filed 8–4–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 7, 8, 14, 15, 16, and 52

[FAR Case 2013–014; Docket No. 2013–0014; Sequence No. 1]

RIN 9000–AM73

Federal Acquisition Regulation; Uniform Use of Line Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to establish a uniform line item identification structure in Federal procurement. The system is designed to improve the accuracy, traceability, and usability of procurement data.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before October 6, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2013–014 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2013–014''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2013–014.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2013–014'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2013–014, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2013–014.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to establish a uniform line item identification structure for the Federal procurement system, planned for implementation during the Fiscal Year (FY) 2016 timeframe. The uniform line item identification structure is designed to improve the accuracy, traceability, and usability of procurement data. This case continues Federal procurement efforts to more robustly implement the objectives of the Federal Funding Accountability and Transparency Act of 2006, including promoting achievement of rigorous accountability of procurement dollars and processes.

Currently, funding traceability is limited to contract-level information in agency contract writing systems which limits the capability to implement and effectively conduct and benefit from initiatives, such as strategic sourcing, on a Federal-wide basis. Use of such a line item identification structure will support efficiency in the tracking of goods and services through identification of key attributes, such as unit pricing on fixed price contracts, which will support tracing of funding from obligation through expenditure.

With this proposed rule, the Federal procurement community continues to improve standardization of a unique instrument identifier, moving the procurement community in the direction of enhancing the uniformity and consistency of data. This, in turn, will promote the achievement of rigorous accountability of procurement dollars and processes previously mentioned and compliance with regulatory and statutory acquisition requirements such as those of the Federal Funding Accountability and Transparency Act of 2006. The proposed FAR coverage is adapted and revised from the Defense Federal Acquisition Regulation Supplement, 48 CFR subpart 204.71, Uniform Contract Line Item Numbering System.

II. Proposed Changes to FAR

The coverage dealing with uniform line item identification has been significantly expanded. The rule provides for the following:

(1) Definitions of ''line item'' and ''subline item'' have been added to FAR subpart 2.1.

(2) At FAR 4.1001, a revised policy statement has been added to require the use of line items, and as necessary, subline items, in order to improve the accuracy, traceability and usability of procurement data.

(3) At FAR 4.1002, a section on applicability of the policies on line item identification to virtually all contract actions has been added.

(4) At FAR 4.1003, a section on establishing line items was added. The policy is that deliverables with the following characteristics should have separate line or subline items; separately identifiable, single unit price or total price; single accounting classification citation; separate delivery schedule, destination, period or place of performance, and same or different contract pricing types.

(5) At FAR 4.1004, a section on establishing subline items was formulated. The coverage distinguishes between deliverable and informational subline items and identifies the circumstances when each should be used.

(6) At FAR 4.1005–1, the required data elements for inclusion with each line item or subline item in the procurement instrument are identified. At 4.1005–2, circumstances are identified when certain required data elements are not necessary.

(7) At FAR 4.1006, coverage is included regarding modifications.

(8) FAR 4.1007 discusses allowing offerors to propose an alternative line item structure.

(9) At FAR 4.1008, the prescription for the solicitation provision allowing an alternative line item structure is detailed.

(10) At FAR parts 5, 7, 14, and 15, cross references to contract line items (CLINS) and subline items are conformed with this rule.

(11) At FAR subpart 8.4, coverage is revised to address application of line items and subline items to Federal Supply Schedules.

(12) At FAR 16.505, coverage is revised to address line items for indefinite-delivery contracts.

(13) At FAR 52.204–YY, the proposed provision prescribed at 4.1008 is delineated.

(14) At 52.212–1, Instructions to Offerors Commercial Items, and 52.212–4, Contract Terms and Conditions-Commercial Items, the provision for commercial items has been revised to address alternative line item identification structure.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs

and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action under section 6(a)(3)(A) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. Therefore, this rule was not subject to Office of Information and Regulatory Affairs review under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

The proposed rule establishes a uniform line item identification structure for the Federal procurement system. The uniform line item identification structure is designed to improve the accuracy, traceability, and usability of procurement data. This proposed rule continues Federal procurement efforts to more robustly implement the objectives of the Federal Funding Accountability and Transparency Act of 2006, including promoting achievement of rigorous accountability of procurement dollars and processes.

The requirements in the proposed rule have the potential to have an impact on any entity, small or large, that does business with the Federal Government because the proposed rule would apply to purchases of items, including commercial items and commercially available off-the-shelf items, and purchases under the simplified acquisition threshold. However, line item pricing is a common commercial practice, therefore the impact on a number of entities may not be significant.

Any small business that contracts with a Federal agency could be impacted to at least some extent. Using data from the Federal Procurement Data System (FPDS), there were 107,172 such small entities in FY 2010, 97,626 in FY 2011, 85,749 in FY 2012, and 73,987 small entities in FY 2013, doing business with the Federal Government.

The proposed rule could require some contractors to restructure their proposal pricing process as well as their systems to accommodate the line item identification system. This change may also require contractors to make changes to their pricing and electronic systems. Contractors may also have to develop more extensive pricing data to conform to a new line item structure. However, this consistent line item identification policy should be beneficial to contractors doing business with executive branch agencies. This is especially true if contractors already have contracts with the Department of Defense (DoD), because these identification standards are already in use. Accordingly, contractors that currently contract with DoD will not be impacted. The FAR system does not have data at this time as to the net cost/benefit to contractors in making this change.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2013–014), in correspondence.

V. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 2, 3, 4, 5, 7, 8, 14, 15, 16, and 52

Government procurement.

Dated: July 31, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA proposes to amend 48 CFR parts 2, 3, 4, 5, 7, 8, 14, 15, 16, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 4, 5, 7, 8, 14, 15, 16, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITION OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definitions ''Line item'' and ''Subline'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Line item means the basic structural element in a procurement instrument that describes and organizes the required product or service for pricing, delivery, inspection, acceptance, invoicing, and payment.

* * * * *

Subline item means a subset of a line item.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.302 [Amended]

■ 3. Amend section 3.302 by removing the definition ''Line item''.

PART 4—ADMINISTRATIVE MATTERS

■ 4. Revise subpart 4.10 to read as follows:

Subpart 4.10—UNIFORM USE OF LINE ITEMS

Sec.

4.1000 Scope of subpart.
4.1001 Policy.
4.1002 Applicability.
4.1003 Establishing line items.
4.1004 Establishing subline items.
4.1005 Data elements for line items and subline items.
4.1005–1 Required schedules.
4.1005–2 Exceptions.
4.1006 Modifications.
4.1007 Solicitation alternative line item structure.
4.1008 Solicitation provision.

4.1000 Scope of subpart.

This subpart prescribes policies and procedures for assigning line item and subline items and their identifiers.

4.1001 Policy.

In order to improve the accuracy, traceability, and usability of procurement data, procurement instruments shall identify the supplies or services to be acquired as separately identified line items and, as needed, subline items.

(a) Line items are established to define deliverables or organize information about deliverables. Each line item describes characteristics for the item purchased, *e.g.,* pricing, delivery, and funding information.

(b) Each line item may be subdivided into separate unique subsets (called subline items) to ease administration. If a line item has deliverable subline items, the line item is informational. Subline items differentiate between or among certain characteristics of the line item, such as colors or sizes, dates of delivery, destinations, or places of performance. Subline items are established to define deliverables or organize information about deliverables.

4.1002 Applicability.

The policies of this subpart shall apply to the following procurement instruments, to include amendments, modifications, and change orders thereto:

(a) Solicitations.

(b) Contracts, including, but not limited to, Government-wide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, agency indefinite-delivery contracts, and purchase orders.

(c) Agreements that include pre-priced supplies or services.

(d) Task and delivery orders.

4.1003 Establishing line items.

Characteristics. Establish separate line items for deliverables that have the following characteristics. A deliverable line item or deliverable subline item must have each characteristic except as provided at 4.1005–2:

(a) *Separately identifiable.* (1) A supply is separately identifiable if it has its own identification (*e.g.,* national stock number (NSN), item description, manufacturer's part number).

(2) Services are separately identifiable if they have no more than one statement of work or performance work statement.

(3) If the procurement instrument involves a first article (see subpart 9.3), establish a separate line item for each item that will be approved separately. If the first article consists of a lot composed of a mixture of items that will be approved as a lot, a single line item may be used.

(b) Single unit price or total price.

(c) Single accounting classification citation.

(d) Separate delivery schedule, destination, period of performance, or place of performance.

(e) Single contract pricing type (*e.g.,* fixed price or cost reimbursement.

4.1004 Establishing subline items.

Subline items may be used to facilitate tracking of performance and deliverables, payment, contract funds accounting or for other management purposes. Subline items may be either deliverable or informational. A line item with subline items shall contain only that information that is common to all subline items thereunder. All subline items under one line item shall be the same contract type as the line item.

(a) *Deliverable subline items.* Deliverable subline items may be used for several related items that require separate identification. For example, instead of establishing multiple separate line items, subline items may be established for—

(1) Items that are basically the same, except for minor variations such as—

(i) Size or color;

(ii) Accounting classification but see also 4.1005–1(a);

(iii) Date of delivery, destination, period or place of performance;

(2) Separately priced collateral functions that relate to the primary product, such as packaging and handling, or transportation;

(3) Items to be separately identified at the time of shipment or performance.

(b) *Informational subline items.*

(1) Informational subline items may be used by agencies for administrative purposes. This type of subline item identifies information that relates directly to the line item and is an integral part of it (*e.g.,* parts of an assembly or parts of a kit).

(2) Position informational subline items within the line item description, not in the quantity or price fields. Informational subline items shall not have prices or delivery schedules.

4.1005 Data elements for line items and subline items.

4.1005–1 Required data elements.

(a) Except as provided in subsection 4.1005–2, each line item or subline item shall include in the schedule (described at 14.201–2, 15.204–2, Block 20 of the SF 1449 (see 12.303(b)(4) or in a comparable section of the procurement instrument), at a minimum, the following information as separate, distinct data elements:

(1) Line item or subline item numeric or alphanumeric unique identifier established in accordance with agency procedures.

(2) Short description of what is being purchased.

(3) Product or Service Code (PSC).

(4) Accounting classification citation. Multiple accounting classifications may be identified using informational subline items. If there are multiple accounting classification citations for a single item, include the dollar amount by accounting classification in the schedule (or a comparable section of the procurement instrument).

(5)(i) For fixed-price line items:

(A) Unit of measure.

(B) Quantity.

(C) Unit price.

(D) Total price.

(ii) For cost-reimbursement line items:

(A) Unit of measure.

(B) Quantity.

(C) Estimated cost.

(D) Fee (if any).

(E) Total estimated cost plus any fee.

(b) If a contract contains a combination of fixed-price, time-and-materials, labor-hour, or cost-reimbursable line items, identify the contract type for each line item in the schedule (or a comparable section of the procurement instrument) to facilitate payment.

(c) Each deliverable line item or deliverable subline item shall have its own delivery schedule, destination, period of performance, or place of performance expressly stated in the appropriate section of the procurement instrument. (''As required'' constitutes an expressly stated delivery term.) When a line item has deliverable subline items, the delivery schedule, destination, period of performance, or place of performance should be identified at the subline item level, rather than the line item level.

(d) Terms and conditions in other sections of the contract (such as contract clauses, or payment instructions) shall also specify applicability to individual line items if not applicable to the contract as a whole.

4.1005–2 Exceptions.

(a) *Indefinite-delivery contracts.* (1) *General.* The following required specific data elements are not known at time of issuance of an indefinite-delivery contract, and will be provided in each order at the time of issuance: accounting classification, delivery date and destination, or period and place of performance.

(2) *Indefinite delivery–indefinite quantity (IDIQ) and requirements contracts.* IDIQ and requirements contracts may omit the quantity at the line item level for the base award provided that the total contract minimum and maximum, or the estimate, respectively, is stated.

(b) *Item description and PSC.* These data elements are not required in the line item if there are associated deliverable subline items that include the actual detailed identification. When this exception applies, use a general narrative description for the line item.

(c) *Single unit price or single total price.* The requirement for a single unit price or single total price at the line item level does not apply if any of the following conditions are present:

(1) There are associated deliverable subline items that are priced.

(2) The line item or subline item is not separately priced.

(3) The supplies or services are being acquired on a cost-reimbursement basis, time-and-materials, or labor-hour basis.

(4) The procurement instrument is for services and firm prices have been established for elements of the total price but the actual number of the elements is not known until

performance (*e.g.,* a labor-hour contract for maintenance/repair). The contracting officer may structure these procurement instruments to reflect a firm or estimated total amount for each line item.

4.1006 Modifications.

(a) When a new item (such as an added quantity) is added to the procurement instrument, assign a new line or subline item identifier.

(b) If the modification relates to existing line items, the modification shall refer to those items.

4.1007 Solicitation alternative line item structure.

Solicitations should be structured to allow offerors to propose an alternative line item structure (see 4.1008 and 52.212–1(e)). For example, when soliciting certain items using units of measure such as kit, set, or lot, the offeror may not be able to group and deliver all items in a single shipment.

4.1008 Solicitation provision.

Insert the provision at 52.204–YY, Alternative Line Item Structure, in all solicitations for supplies or services, including construction.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 5. Amend section 5.207 by revising paragraph (a)(13) to read as follows:

5.207 Preparation and transmittal of synopses.

(a) * * *

(13) Contract Line items and, if applicable subline items.

* * * * *

PART 7–ACQUISITION PLANNING

■ 6. Amend section 7.105 by revising the second sentence of paragraph (b)(5)(iv) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(5) * * *

(iv) * * * During the requirements development stage, consider structuring the contract requirements, *e.g.,* line and subline items identifiers, in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. * * *

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 7. Amend section 8.402 by revising paragraph (f)(3) to read as follows:

8.402 General.

* * * * *

(f) * * *

(3) The line or subline items are clearly labeled on the order as items not on the Federal Supply Schedule and they conform to the rules for numbering line and subline items at subpart 4.10; and

* * * * *

■ 8. Amend section 8.404 by adding paragraph (j) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(j) *Line items.* When placing orders or establishing BPAs, ordering activities shall reference the Special Item Number (SIN) and the corresponding line or subline item awarded (established per 4.1005) in the schedule. If an ordering activity contracting officer adds an item not on the Federal Supply Schedule in accordance with 8.402(f), establish a new line or subline item in accordance with subpart 4.10.

■ 9. Amend section 8.406–1 by—

■ a. Redesignating paragraphs (d)(8) through (d)(16) as paragraphs (d)(9) through (d)(17);

■ b. Adding a new paragraph (d)(8); and

■ c. Revising the newly redesignated paragraph (d)(9).

The revised and added text reads as follows:

8.406–1 Order placement.

* * * * *

(d) * * *

(8) Line item or subline item unique identifier.

(9) A statement of work for services, when required, or a brief, complete description of each line or subline item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).

■ 10. Amend section 8.406–4 by revising paragraph (c)(3)(i)(C) to read as follows:

8.406–4 Termination for cause.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(C) National stock or special item number(s), line item or subline item unique identifier, and a brief description of the item(s).

* * * * *

PART 14—SEALED BIDDING

■ 11. Amend section 14.201–2 by revising the last sentence of paragraph (b) to read as follows:

14.201–2 Part 1—The Schedule

* * * * *

(b) * * * Include a brief description of the supplies or services; *e.g.,* line item or subline item unique identifier, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (see Part 11). * * *

* * * * *

■ 12. Amend section 14.201–9 by revising paragraph (b)(1) to read as follows:

14.201–9 Simplified contract format.

* * * * *

(b) * * *

(1) Line item or subline item unique identifier.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

15.203 [Amended]

■ 13. Amend section 15.203 by removing from paragraph (a)(2)(ii) ''alternative CLIN'' and adding ''alternative line and subline item'' in its place.

15.204–2 [Amended]

■ 14. Amend section 15.204–2 by removing from paragraph (b) ''*e.g.,* item number'' and adding ''*e.g.,* line item or subline item unique identifiers,'' in its place.

15.408 [Amended]

■ 15. Amend section 15.408 in Table 15–2, which follows paragraph (n), by—

■ 1. Revising paragraph D. of the *I. General Instructions* and removing from paragraph E. ''contract'';

■ 2. Removing from the first sentence of paragraph A. of the *II. Cost Elements,* ''contract''; and

■ 3. Adding to the second sentence of paragraph B.(3) of the III. Formats for Submission of Line Item Summaries.

The revised and added text reads as follows:

15.408 Solicitation provisions and contract clauses.

* * * * *

Table 15–2—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required

* * * * *

I. General Instructions

* * * * *

D. You must show the relationship between line or subline item prices and the total contract price. You must attach cost-element breakdowns for each proposed line or subline item, using the appropriate format prescribed in the ''Formats for Submission of Line Item Summaries'' section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.

* * * * *

III. Formats for Submission of Line Item Summaries

* * * * *

B. * * *

* * * * *

(3) * * * Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line or subline item.

* * * * *

PART 16—TYPES OF CONTRACTS

■ 16. Amend section 16.505 by revising paragraph (a)(7)(iii) to read as follows:

16.505 Ordering.

(a) * * *

(7) * * *

(iii) For supplies and services, contract line item number unique identifier(s), subline item unique identifier, if applicable, and description, quantity, and unit price or estimated cost or fee. The corresponding line item unique identifier(s) and subline item unique identifier(s) from the base contract shall also be included.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES.

■ 17. Add section 52.204–YY to read as follows:

52.204–YY Alternative Line Item Structure.

As prescribed in 4.1008, insert the following provision:

Alternative Line Item Structure (Date)

(a) Line items are the basic structural elements in a solicitation or contract that provide for the organization of contract requirements to facilitate pricing, delivery, inspection, acceptance and payment. Line items are organized into line and subline items. Separate line items should be established to account for separate pricing, identification, deliveries, or funding. The Government recognizes that the line item structure in this solicitation may not conform to the Offeror's practices. Failure to correct these issues can result in difficulties in accounting for deliveries and processing payments. Therefore, the Offeror is invited to propose an alternative line item structure for items on which bids, proposals, or quotes are requested in this solicitation to ensure that the resulting contract line item structure is economically and administratively advantageous to the Government and the Offeror.

(b) The Offeror may propose one or more additional, alternative line item structures provided that each structure is consistent with subpart 4.10 of the Federal Acquisition Regulation. However, acceptance of the alternative structure is a unilateral decision made solely at the discretion of the Government. Offers that do not comply with the line item structure specified in this solicitation may be determined to be nonresponsive or unacceptable.

(End of provision)

■ 18. Amend section 52.212–1 by revising the date of the provision; and paragraph (e) to read as follows:

52.212–1 Instructions to Offerrors—Commercial Items.

* * * * *

Instructions to Offerrors—Commercial Items (Date)

* * * * *

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line item structures (provided that each line item structure is consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

* * * * *

[FR Doc. 2014–18509 Filed 8–4–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2014–0082]

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2012, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2012. The preliminary theft data indicate that the vehicle theft rate for CY/MY 2012 vehicles (1.1294 thefts per thousand vehicles) increased by 14.21 percent from the theft rate for CY/MY 2011 vehicles (0.9889) thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before October 6, 2014.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2012–0082 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

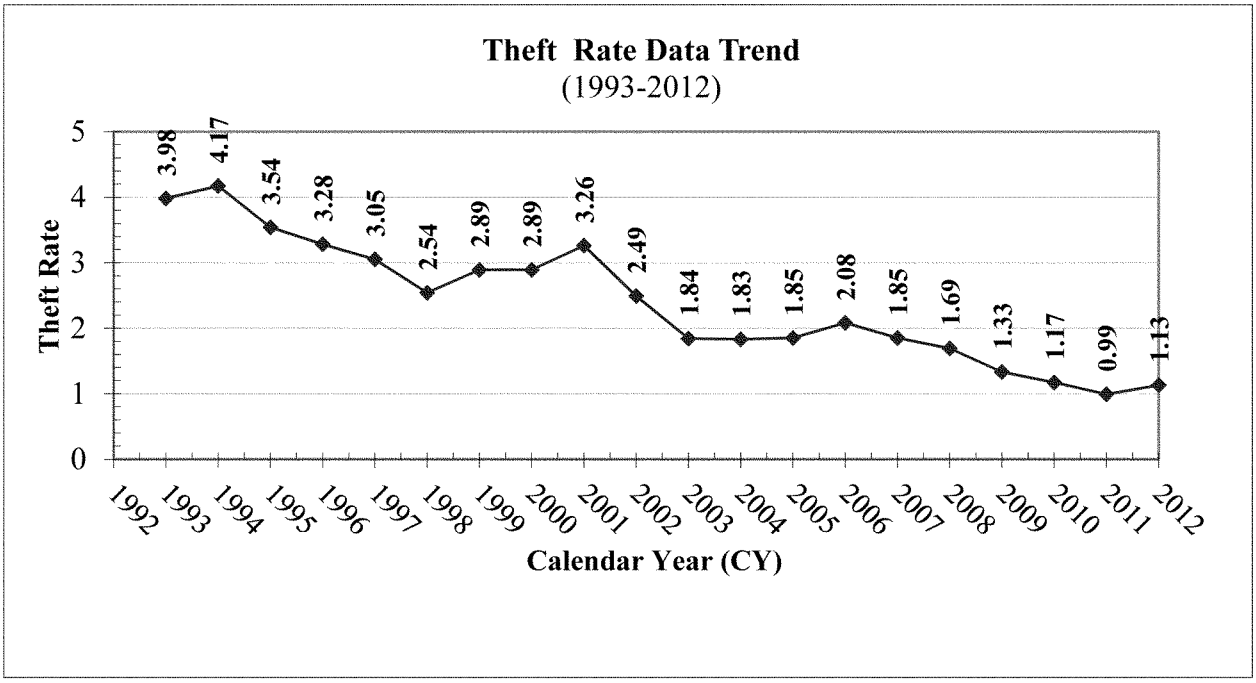
The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2012 the most recent calendar year for which data are available.

In calculating the 2012 theft rates, NHTSA followed the same procedures it has used since publication of the 1983/1984 theft rate data (50 FR 46669, November 12, 1985). The 2012 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2012 vehicles of that line stolen during calendar year 2012 by the total number of vehicles in that line manufactured for MY 2012, as reported to the Environmental Protection Agency (EPA). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from approximately 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The preliminary 2012 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2011 (For 2011 theft data, see 79 FR 7090, February 6, 2014). The preliminary theft rate for MY 2012 passenger vehicles stolen in calendar year 2012 increased to 1.1294 thefts per thousand vehicles produced, an increase of 14.21 percent from the rate of 0.9889 thefts per thousand vehicles experienced by MY 2011 vehicles in CY 2011. For MY 2012 vehicles, out of a total of 210 vehicle lines, nine lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the nine vehicle lines with a theft rate higher than 3.5826, eight are passenger car lines, one is a multipurpose passenger vehicle line, and none are light-duty truck lines.

The data presented in this publication reflect an increase in the overall vehicle theft rate for CY/MY 2012, which is slightly inconsistent with the general theft rate trend over the past several years. Historically however, the data has shown an overall decreasing trend with periods of increase from one year to the next. While the theft rate data show only a slight increase in the overall theft rate for CY/MY 2012, the agency welcomes any comments on the increase in the overall theft rate for this period.

Figure 1: Theft Rate Data Trend (1993-2012)



Theft rate per thousand vehicles produced

In Table I, NHTSA has tentatively ranked each of the MY 2012 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the

complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given in the **FOR FURTHER INFORMATION CONTACT** section, and two copies from which the purportedly confidential information has been deleted should be submitted to the docket. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

BILLING CODE 4910–59–P

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2012 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2012

	Manufacturer	Make/model (line)	Thefts 2012	Production (Mfr's) 2012	2012 Theft rate (per 1,000 vehicles produced)
1	MERCEDES-BENZ	CL-CLASS	17	827	20.5562
2	MITSUBISHI	ECLIPSE	34	6,186	5.4963
3	MAZDA	6	202	40,004	5.0495
4	CHRYSLER	DODGE CHARGER	316	66,432	4.7567
5	NISSAN	INFINITI FX35/FX50	35	8,902	3.9317
6	CHRYSLER	DODGE AVENGER	329	85,365	3.8540
7	CHRYSLER	300	232	60,287	3.8483
8	GENERAL MOTORS	CHEVROLET IMPALA	604	165,986	3.6389
9	MITSUBISHI	GALANT	67	18,600	3.6022
10	GENERAL MOTORS	CHEVROLET CAPTIVA	112	31,797	3.5223
11	BMW	6	19	5,609	3.3874
12	CHRYSLER	DODGE CHALLENGER	143	43,080	3.3194
13	GENERAL MOTORS	CHEVROLET CAMARO	249	80,707	3.0852
14	TOYOTA	YARIS	166	54,886	3.0245
15	NISSAN	PATHFINDER	47	15,765	2.9813
16	CHRYSLER	200	352	121,175	2.9049
17	MERCEDES-BENZ	S-CLASS	29	11,443	2.5343
18	NISSAN	ALTIMA	760	313,956	2.4207
19	GENERAL MOTORS	CHEVROLET MALIBU	509	225,791	2.2543
20	FORD MOTOR CO	MUSTANG	178	80,487	2.2115
21	AUDI	AUDI A8	10	4,538	2.2036
22	VOLVO	XC90	3	1,377	2.1786
23	NISSAN	INFINITI M35H/M37/M56	28	13,731	2.0392
24	BMW	B7	1	492	2.0325
25	NISSAN	MAXIMA	129	65,150	1.9800
26	MAZDA	2	32	16,169	1.9791
27	PORSCHE	PANAMERA	13	7,056	1.8424
28	NISSAN	VERSA	272	149,418	1.8204
29	HONDA	ACURA ZDX	2	1,122	1.7825
30	FORD MOTOR CO	TAURUS	69	39,314	1.7551
31	MERCEDES-BENZ	GLK-CLASS	45	26,554	1.6947
32	BMW	7	23	13,696	1.6793
33	NISSAN	SENTRA	229	139,585	1.6406
34	GENERAL MOTORS	GMC CANYON PICKUP	22	13,690	1.6070
35	MASERATI	GRANTURISMO	3	1,953	1.5361
36	GENERAL MOTORS	CHEVROLET CORVETTE	17	11,144	1.5255
37	JAGUAR LAND ROVER	XK/XKR	2	1,323	1.5117
38	NISSAN	INFINITI G25/G37	85	56,585	1.5022
39	KIA	FORTE	106	72,284	1.4664
40	VOLVO	C70	7	4,787	1.4623
41	TOYOTA	COROLLA	304	197,973	1.4257

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2012 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2012—continued

	Manufacturer	Make/model (line)	Thefts 2012	Production (Mfr's) 2012	2012 Theft rate (per 1,000 vehicles produced)
42	MAZDA	CX-7	11	7,945	1.3845
43	CHRYSLER	DODGE CALIBER	15	10,953	1.3695
44	JAGUAR LAND ROVER	XJ	7	5,158	1.3571
45	KIA	RIO	34	25,441	1.3364
46	FORD MOTOR CO	FOCUS	413	318,556	1.2965
47	SUZUKI	SX4	20	15,617	1.2807
48	AUDI	AUDI A7	15	11,768	1.2746
49	KIA	OPTIMA	132	106,747	1.2366
50	AUDI	AUDI A3	9	7,287	1.2351
51	BMW	5	53	43,103	1.2296
52	FORD MOTOR CO	FUSION	371	308,520	1.2025
53	CHRYSLER	JEEP LIBERTY	124	104,184	1.1902
54	SUZUKI	GRAND VITARA	8	6,923	1.1556
55	HYUNDAI	SONATA	264	230,381	1.1459
56	TOYOTA	SCION TC	24	21,188	1.1327
57	VOLKSWAGEN	PASSAT	107	95,583	1.1194
58	GENERAL MOTORS	CHEVROLET CRUZE	297	270,622	1.0975
59	MERCEDES-BENZ	C- CLASS	84	76,638	1.0961
60	HYUNDAI	ACCENT	80	73,458	1.0891
61	HYUNDAI	GENESIS	41	37,741	1.0864
62	VOLVO	S80	4	3,748	1.0672
63	VOLVO	C30	3	2,841	1.0560
64	TOYOTA	CAMRY	547	523,846	1.0442
65	GENERAL MOTORS	BUICK REGAL	26	26,003	0.9999
66	VOLKSWAGEN	JETTA	176	178,153	0.9879
67	TOYOTA	LEXUS LS	8	8,102	0.9874
68	FIAT	500	60	60,935	0.9847
69	HONDA	PILOT	42	42,657	0.9846
70	BENTLEY MOTORS	CONTINENTAL	2	2,060	0.9709
71	GENERAL MOTORS	CADILLAC CTS	51	52,531	0.9709
72	MAZDA	5	31	32,530	0.9530
73	NISSAN	QUEST VAN	20	21,388	0.9351
74	KIA	SOUL	94	100,672	0.9337
75	MAZDA	3	129	142,875	0.9029
76	VOLKSWAGEN	CC	26	29,350	0.8859
77	TOYOTA	AVALON	18	20,938	0.8597
78	HONDA	ACCORD	275	325,034	0.8461
79	FORD MOTOR CO	FIESTA	50	59,978	0.8336
80	FORD MOTOR CO	ESCAPE	199	238,713	0.8336
81	HYUNDAI	SANTA FE	49	59,411	0.8248
82	GENERAL MOTORS	CHEVROLET SONIC	69	83,979	0.8216
83	GENERAL MOTORS	BUICK LACROSSE	50	60,891	0.8211
84	CHRYSLER	DODGE JOURNEY	62	77,471	0.8003

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2012 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2012—continued

	Manufacturer	Make/model (line)	Thefts 2012	Production (Mfr's) 2012	2012 Theft rate (per 1,000 vehicles produced)
85	NISSAN	370Z	5	6,271	0.7973
86	JAGUAR LAND ROVER	XF	5	6,288	0.7952
87	KIA	SPORTAGE	33	41,590	0.7935
88	VOLKSWAGEN	GTI	14	18,586	0.7533
89	MERCEDES-BENZ	E-CLASS	38	50,591	0.7511
90	FORD MOTOR CO	LINCOLN MKZ	28	37,676	0.7432
91	HYUNDAI	ELANTRA	125	169,256	0.7385
92	FORD MOTOR CO	EDGE	56	75,972	0.7371
93	TOYOTA	VENZA	17	23,128	0.7350
94	HONDA	CIVIC	333	455,627	0.7309
95	FORD MOTOR CO	LINCOLN MKS	5	6,890	0.7257
96	KIA	SEDONA VAN	24	33,319	0.7203
97	HONDA	CR-Z	4	5,609	0.7131
98	GENERAL MOTORS	CHEVROLET COLORADO PICKUP	36	50,765	0.7092
99	HONDA	CROSSTOUR	19	26,934	0.7054
100	MITSUBISHI	I-MIEV	1	1,435	0.6969
101	CHRYSLER	JEEP COMPASS	30	43,360	0.6919
102	AUDI	AUDI Q7	6	8,951	0.6703
103	BMW	3	29	43,714	0.6634
104	MITSUBISHI	OUTLANDER	14	21,288	0.6576
105	HONDA	ACURA TSX	24	36,921	0.6500
106	MITSUBISHI	LANCER	11	16,958	0.6487
107	HYUNDAI	VELOSTER	20	30,980	0.6456
108	VOLVO	S60	22	34,378	0.6399
109	PORSCHE	911	5	8,114	0.6162
110	MAZDA	CX-9	20	32,980	0.6064
111	TOYOTA	SCION XB	27	44,722	0.6037
112	SUBARU	LEGACY	23	39,094	0.5883
113	FORD MOTOR CO	LINCOLN MKX	10	17,121	0.5841
114	HONDA	ACURA RDX	5	8,786	0.5691
115	CHRYSLER	JEEP PATRIOT	34	59,849	0.5681
116	KIA	SORENTO	60	107,269	0.5593
117	JAGUAR LAND ROVER	LAND ROVER EVOQUE	5	9,075	0.5510
118	BMW	X3	8	14,543	0.5501
119	NISSAN	FRONTIER PICKUP	39	71,502	0.5454
120	VOLVO	XC70	3	5,507	0.5448
121	NISSAN	ROGUE	76	140,561	0.5407
122	TOYOTA	LEXUS IS	17	31,725	0.5359
123	VOLKSWAGEN	TIGUAN	16	29,862	0.5358
124	SUBARU	IMPREZA	35	67,058	0.5219
125	AUDI	AUDI S4/S5	4	7,710	0.5188
126	TOYOTA	HIGHLANDER	68	132,822	0.5120
127	TOYOTA	TACOMA PICKUP	65	127,812	0.5086

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2012 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2012—continued

	Manufacturer	Make/model (line)	Thefts 2012	Production (Mfr's) 2012	2012 Theft rate (per 1,000 vehicles produced)
128	NISSAN	XTERRA	11	22,343	0.4923
129	TOYOTA	SIENNA VAN	55	112,906	0.4871
130	SUBARU	TRIBECA	1	2,085	0.4796
131	AUDI	AUDI A4/A5	18	37,744	0.4769
132	HONDA	ACURA MDX	24	50,568	0.4746
133	HYUNDAI	TUCSON	27	57,218	0.4719
134	MAZDA	MX-5 MIATA	3	6,501	0.4615
135	BMW	M3	1	2,170	0.4608
136	TOYOTA	LEXUS RX	30	65,554	0.4576
137	BMW	1	4	8,770	0.4561
138	CHRYSLER	JEEP WRANGLER	64	141,387	0.4527
139	HONDA	ACURA TL	24	53,260	0.4506
140	HONDA	INSIGHT	3	6,723	0.4462
141	FORD MOTOR CO	FLEX	9	20,181	0.4460
142	GENERAL MOTORS	GMC TERRAIN	44	100,103	0.4395
143	SUBARU	FORESTER	27	64,142	0.4209
144	TOYOTA	FJ CRUISER	6	14,852	0.4040
145	MERCEDES-BENZ	SLK-CLASS	2	4,953	0.4038
146	MERCEDES-BENZ	SMART FORTWO	2	5,035	0.3972
147	VOLKSWAGEN	GOLF	10	25,207	0.3967
148	NISSAN	MURANO	23	58,188	0.3953
149	GENERAL MOTORS	CHEVROLET EQUINOX	87	220,965	0.3937
150	VOLKSWAGEN	BEETLE	12	30,622	0.3919
151	TOYOTA	RAV4	62	170,414	0.3638
152	AUDI	AUDI Q5	12	33,880	0.3542
153	HYUNDAI	EQUUS	1	2,848	0.3511
154	NISSAN	JUKE	13	37,933	0.3427
155	JAGUAR LAND ROVER	LAND ROVER LR2	1	2,921	0.3423
156	BMW	MINI COOPER	24	70,328	0.3413
157	TOYOTA	LEXUS ES	11	32,739	0.3360
158	NISSAN	CUBE	2	6,021	0.3322
159	AUDI	AUDI A6	6	18,374	0.3265
160	SUZUKI	KIZASHI	2	6,331	0.3159
161	VOLVO	XC60	5	16,144	0.3097
162	TOYOTA	SCION IQ	3	9,744	0.3079
163	TOYOTA	PRIUS	67	220,571	0.3038
164	SUBARU	OUTBACK WAGON	29	97,633	0.2970
165	HONDA	CR-V	68	230,293	0.2953
166	TOYOTA	LEXUS CT	6	21,668	0.2769
167	NISSAN	INFINITI EX35	1	3,734	0.2678
168	GENERAL MOTORS	CADILLAC SRX	18	67,705	0.2659
169	GENERAL MOTORS	BUICK VERANO	8	32,639	0.2451
170	HYUNDAI	VERACRUZ	2	8,560	0.2336

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2012 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2012—continued

	Manufacturer	Make/model (line)	Thefts 2012	Production (Mfr's) 2012	2012 Theft rate (per 1,000 vehicles produced)
171	HONDA	FIT	11	50,757	0.2167
172	VOLKSWAGEN	EOS	2	11,140	0.1795
173	FORD MOTOR CO	TRANSIT CONNECT VAN	7	43,125	0.1623
174	HYUNDAI	AZERA	1	7,745	0.1291
175	GENERAL MOTORS	CHEVROLET VOLT	2	18,355	0.1090
176	ASTON MARTIN	DB9	0	47	0.0000
177	ASTON MARTIN	DBS	0	106	0.0000
178	ASTON MARTIN	RAPIDE	0	210	0.0000
179	ASTON MARTIN	V12 VANTAGE	0	85	0.0000
180	ASTON MARTIN	V8 VANTAGE	0	306	0.0000
181	ASTON MARTIN	VIRAGE	0	302	0.0000
182	BMW	M6	0	252	0.0000
183	BMW	Z4	0	2,203	0.0000
184	ROLLS ROYCE	GHOST	0	764	0.0000
185	ROLLS ROYCE	PHANTOM	0	53	0.0000
186	FERRARI	458	0	685	0.0000
187	FERRARI	CALIFORNIA	0	566	0.0000
188	FERRARI	FF	0	259	0.0000
189	MASERATI	QUATTROPORTE	0	519	0.0000
190	CODA AUTOMOTIVE	CODA	0	115	0.0000
191	SAAB	9-4X	0	26	0.0000
192	HONDA	ACURA RL	0	398	0.0000
193	LOTUS	EVORA	0	146	0.0000
194	MCLAREN	MP4-12C	0	697	0.0000
195	MERCEDES-BENZ	B-CLASS	0	25	0.0000
196	MERCEDES-BENZ	SL-CLASS	0	928	0.0000
197	MERCEDES-BENZ	SLS-CLASS	0	1,275	0.0000
198	NISSAN	GT-R	0	1,228	0.0000
199	NISSAN	LEAF	0	11,460	0.0000
200	PORSCHE	BOXSTER	0	754	0.0000
201	PORSCHE	CAYMAN	0	1,022	0.0000
202	SUZUKI	EQUATOR PICKUP	0	2,392	0.0000
203	TESLA	MODEL S	0	2,952	0.0000
204	TOYOTA	LEXUS HS	0	503	0.0000
205	AUDI	AUDI R8	0	1,272	0.0000
206	AUDI	AUDI TT	0	2,259	0.0000
207	BENTLEY MOTORS	MULSANNE	0	233	0.0000
208	BUGATTI	VEYRON	0	5	0.0000
209	LAMBORGHINI	AVENTADOR COUPE	0	252	0.0000
210	LAMBORGHINI	GALLARDO	0	285	0.0000
	Theft rate per 1,000 vehicles produced =	$\left(\frac{\textbf{Total theft}}{\textbf{Total production}}\right)\textbf{x1000}$	**12,172**	**10,777,407**	**1.1294**

Authority: Under authority delegated in 49 CFR part 1.95.

David M. Hines,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–18443 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0072; 4500030113]

RIN 1018–AY10

Endangered and Threatened Wildlife and Plants; Threatened Status for the Bi-State Distinct Population Segment of Greater Sage-Grouse With Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 28, 2013, proposed rule to list the bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) as threatened under the Endangered Species Act of 1973, as amended, with a special rule. We are taking this action based on new information received regarding population trends, and recent State and Federal agency funding and staffing commitments for various conservation efforts associated with the Bi-State Action Plan, making it necessary to solicit feedback by reopening the comment period for 30 days. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final listing determination. We anticipate publishing a final listing determination on or before April 28, 2015.

DATES: The comment period for the proposed rule published in the **Federal Register** on October 28, 2013 (78 FR 64358), is reopened. We will consider comments received or postmarked on or before September 4, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and associated documents and letters discussed in this supplement to the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072, or contact the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2013–0072, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate the document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2013–0072; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

FOR FURTHER INFORMATION CONTACT: For information on the proposed listing rule, proposed special rule, and proposed critical habitat designation, contact Edward D. Koch, State Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300; or facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2013, we published a proposed rule to list the bi-State DPS of greater sage-grouse (*Centrocercus urophasianus*) in California and Nevada as a threatened species under the Endangered Species Act of 1973, as amended (Act) (78 FR 64358), with a special rule. We concurrently published a proposed rule to designate critical habitat (78 FR 64328). We received requests to extend the public comment periods on the rules beyond the December 27, 2013, due date. In order to ensure that the public had an adequate opportunity to review and comment on our proposed rules, we extended the comment periods for an additional 45 days to February 10, 2014 (78 FR 77087; December 20, 2013).

On April 8, 2014, we reopened the comment period on our October 28, 2013, proposed rule to list the bi-State DPS, the special rule, and the proposed critical habitat rule (79 FR 19314). We also announced two public hearings that were subsequently postponed (79 FR 26684, May 9, 2014) to May 28, 2014, and May 29, 2014, respectively. The April 8, 2014, document also announced a 6-month extension of the final determination of whether or not to list the bi-State DPS as a threatened species, which will automatically delay any decision we make regarding critical habitat for the bi-State DPS. The comment period was reopened and extended to June 9, 2014, and our decision to delay the final listing action was because of substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing, making it necessary to solicit additional information. Thus, we announced that we will publish a listing determination on or before April 28, 2015. On June 3, 2014, we announced an extension of the comment period on the proposed critical habitat rule (79 FR 31901), the availability of a draft economic analysis of the proposed designation of critical habitat for the bi-State DPS, and an amended required determinations section of the proposed critical habitat rule (available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0042).

Since publication of the proposed listing rule, we have received new information on the population trends of the bi-State DPS. The publication models population growth and trajectory of the bi-State DPS across its range as well as within individual subpopulations contained within the DPS. These data may characterize risk to the bi-State DPS and predict future population trends. This information is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072).

In addition to this new trend information, we have continued to work closely with our interagency partners to implement and plan conservation actions that benefit the bi-State DPS and its habitat. These conservation efforts are embodied primarily in the formalized Bi-State Action Plan (Bi-State Technical Advisory Committee 2012), which is a multiagency management plan that outlines approximately 80 specific actions

needed to address ongoing and future threats to the Bi-State DPS and its habitat. We recently received State and Federal agency letters (available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072) that document commitments for the necessary funding and staff required to implement conservation actions in the Bi-State Action Plan. We note that the necessary regulatory mechanisms to implement these conservation efforts are currently in place; in some cases, associated management plans are being revised to ensure the conservation efforts are successfully implemented to address threats that may be acting on the DPS or its habitat. As part of our final listing determination, we will examine the various conservation efforts that are currently in progress and anticipated in the future throughout the range of the bi-State DPS. We will evaluate existing regulatory mechanisms (and associated management plans) and volunteer efforts for their biologically meaningful contribution to the conservation of the bi-State DPS and its habitat.

Information Requested

We will accept written comments and information during this reopened comment period on our proposed listing (and special 4(d) rule) for the bi-State DPS that published in the **Federal Register** on October 28, 2013 (78 FR 64358). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

We are particularly interested in new information and comments regarding:

(1) New population trend information and analysis (currently available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072).

(2) Whether there is scientific information in addition to that considered in our proposed rule and the new population trends data currently available as supporting information (on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072) that may be useful in our analysis.

(3) The scope of the proposed 4(d) rule.

(4) Consideration of the various conservation commitments (as outlined in the State and Federal agency letters available on the internet at *http://www.regulations.gov*, Docket No. FWS–R8–ES–2013–0072), which are consistent with the Bi-State Action Plan.

If you submitted comments or information on the proposed rule (78 FR 64358) during the initial comment period from October 28, 2013, to February 10, 2014, or the subsequent comment period from April 8, 2014, to June 9, 2014, please do not resubmit them. We have incorporated them into the public record, and we will consider them in the preparation of our final determination. Our final determination concerning the listing and special rule will take into consideration all written comments and any additional information we receive.

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

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

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing and special rule will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2013–0072, or at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 17, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–18180 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 150

Tuesday, August 5, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0065]

Notice of Request for Extension of Approval of an Information Collection; Importation of Eggplant from Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of eggplant from Israel into the continental United States.

DATES: We will consider all comments that we receive on or before October 6, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2014-0065.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0065* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of eggplant from Israel, contact Mr. Dennis Martin, Trade Director, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851–2033. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Eggplant From Israel.

OMB Control Number: 0579–0350.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, APHIS regulates the importation of fruits and vegetables into the United States from certain parts of the world as provided in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–69).

Section 319.56–49 of the regulations provides for the importation of eggplant from Israel into the continental United States under specified conditions intended to prevent the introduction of certain quarantine pests. These requirements include the use of information collection activities, such as trapping records, box labeling, approval (grower registration) and inspection of pest-exclusionary structures, and a phytosanitary certificate issued by the national plant protection organization (NPPO) of Israel with an additional declaration confirming that the eggplant has been produced in accordance with the regulations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Importers and growers of eggplant and the NPPO of Israel.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 1.667.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response).

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of July 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–18529 Filed 8–4–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0048]

Notice of Request for Extension of Approval of an Information Collection; Virus-Serum-Toxin Act and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Virus-Serum-Toxin Act and regulations.

DATES: We will consider all comments that we receive on or before October 6, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0048.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0048, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0048* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Virus-Serum-Toxin Act and regulations, contact Dr. Donna Malloy, Section Leader, Operational Support, Center for Veterinary Biologics Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 851–3426. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Control Number: 0579–0013.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Virus-Serum-Toxin Act (21 U.S.C. 151–159), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to prevent the importation, preparation, sale, or shipment of harmful veterinary biological products. These regulations are contained in 9 CFR parts 102 to 124.

Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin, such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers of such products. APHIS also enforces requirements concerning production, packaging, labeling, and shipping of these products and sets standards for the testing of these products.

To help ensure that veterinary biological products used in the United States are pure, safe, potent, and effective, APHIS requires certain information collection activities, including, among other things, establishment license applications, product license applications, product import permit applications, product and test report forms, field study summaries, stop distribution and sale notifications, and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.976 hours per response.

Respondents: U.S. importers, exporters, and shippers of veterinary biological products; State veterinary authorities; and operators of establishments that produce or test veterinary biological products or that engage in product research and development.

Estimated annual number of respondents: 220.

Estimated annual number of responses per respondent: 180.32

Estimated annual number of responses: 39,670.

Estimated total annual burden on respondents: 78,382 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of July 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–18530 Filed 8–4–14; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting of the Delaware Advisory Committee to the Commission will convene at 1:00 p.m. (EDT) on Friday, August 29, 2014, at the offices of Young Conaway Stargatt & Taylor, LLP, located at 1000 N. King Street, Wilmington, DE 19801. The purpose of the meeting is to discuss and plan the Committee's civil rights project to review efforts by school districts in Delaware to address discriminatory school disciplinary policies and practices, with a special emphasis on the Christina School District.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Friday, September 29, 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 Evelyn Bohor 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 on July 31, 2014.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–18484 Filed 8–4–14; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that a planning meeting of the Connecticut Advisory Committee to the Commission will convene at 10:00 a.m. (EDT) on Wednesday, August, 20, 2014, at the Legislative Office Building, Hearing Group Room 1D, 210 Capitol Avenue, Hartford, CT 06106. The purpose of the planning meeting is to discuss civil rights issues in Connecticut, review project proposals, and select a civil rights topic to examine during their appointment term.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, September 22, 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 Evelyn Bohor 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 on July 31, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–18483 Filed 8–4–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Civil Rights.

Title: Complaint of Employment Discrimination Based on Sexual Orientation against the Department of Commerce.

OMB Control Number: 0690–0024.

Form Number(s): CD–545.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 10.

Number of Respondents: 20.

Average Hours per Response: 30 minutes.

Needs and Use: Pursuant to Executive Order 11478 and Department of Commerce Administrative Order (DAO) 215–11, an employee or applicant for employment with the Department of Commerce who alleges that he or she has been subjected to discriminatory treatment based on sexual orientation by the Department of Commerce or one of its sub-agencies, must submit a signed statement that is sufficiently precise to identify the actions or practices that form the basis of the complaint. Through use of this standardized form, the Office of Civil Rights proposes to collect the information required by the Executive Order and DAO in a uniform manner that will increase the efficiency of complaint processing and trend analyses of complaint activity.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.emp.gov* or faxed to (202) 395–5806.

Dated: July 30, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–18412 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: State and Local Government Finance Forms.

OMB Control Number: 0607–0585.

Form Number(s): F–5, F–11, F–12, F–12(S), F–13, F–28, F–29, F–32.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 13,135.

Average Hours per Response: 2 hours and 45 minutes.

Burden Hours: 36,377.

Needs and Uses: The Annual Surveys of State and Local Government Finances collect data on state government finances and estimates of local government revenue, expenditure, debt, assets, and pension systems nationally and within state areas. The surveys include the Annual Survey of State Government Tax Collections, Annual Survey of State Government Finances, the Annual Survey of Local Government Finances, and the Annual Survey of Public Pensions. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). This program is the only known comprehensive source of state and local government finance data collected on a nationwide scale using uniform definitions, concepts, and procedures.

The questionnaires for collecting the Annual Surveys of State and Local

Government Finances are described below.

Form F–5. State governments provide detailed data on their tax collections. Much of this detail is not available in the state's primary source document.

Forms F–11, F12, and F–12(S). State and local government pension systems provide data on their receipts, payments, assets, membership, and beneficiaries.

Forms F–13. State agencies provide data not included in the audits, electronic files and other primary sources the Census Bureau uses to compile state government financial data. Form F–13 is used to collect data from state insurance trust systems.

Form F–28. Counties, cities, and townships provide data on revenues, expenditures, debt, and assets.

Form F–29. Multi-function special district governments provide data on revenues, expenditures, debt, and assets.

Form F–32. Single-function special district governments and dependent agencies of local governments provide data on revenues, expenditures, debt and assets.

There are no significant planned revisions to the forms listed above. Form F–25 is being eliminated as state agency data are collected under state data arrangements. Form F–42, which collects data on school building authorities, is also being eliminated. School building authority data will now be collected on the F–32 or F–29 form.

Data are also gathered using means outside of a traditional form canvass. The Census Bureau also collects data through arrangements with state governments, central collection arrangements with local governments, supplemental data letters, and using electronic reporting instruments.

In addition, there will be a canvass of local government public employee pension systems in 2014 to address a potential under coverage of these systems. The canvass will include a letter requesting contact information, membership, payments, and cash and investments for the defined benefit plan.

In contrast to the previous submission, this submission only includes data collected in the annual sample years of 2014–2016. The last submission included data collected during the Census of Governments which occurs only in years ending in '2' and '7' and includes a full canvass of all state and non-school local governments. Accordingly, the requested burden hours will be substantially less than the previous submission.

The Census Bureau incorporates the data collected on these forms into its governmental finance program. This program has facilitated the dissemination of comprehensive and comparable governmental finance statistics since 1902.

Beginning with the 1993 annual data series, all data, summary tables, and files have been released on the Internet. At the Internet site, (*www.census.gov/govs/*) users will find documentation, summary tables and files.

These data are widely used by Federal, state, and local legislators, policy makers, analysts, economists, and researchers to follow the changing characteristics of the government sector of the economy. The data are also widely used by the media and academia.

The Census Bureau provides its state and local government finance data annually to the Bureau of Economic Analysis (BEA) for use in measuring and developing estimates of the government sector of the economy in the National Income and Product Accounts. The Census Bureau also provides these data to the Federal Reserve Board for constructing the Flow of Funds Accounts.

In addition, the data are used by the Bureau of Justice Statistics, Centers for Medicare and Medicaid Services, Council of Economic Advisors, Government Accountability Office, National Center for Education Statistics, and the National Science Foundation.

Discontinuing the state and local government finance program would create a large gap in economic statistics for the government sector, making it impossible for the BEA to calculate the government sector of the National Income and Product Accounts. It would also eliminate a key source of data needed by the Federal Reserve Board. Additionally, the state and local government data are also needed as inputs into the Justice Expenditure and Employment Extract Series, produced by the Bureau of Justice Statistics, and the National Health Expenditure Accounts produced by the Centers for Medicare and Medicaid Services. The data are also published annually in the Digest of Education Statistics produced by National Center for Education Statistics, the Economic Report of the President produced by the Council of Economic Advisors, and the source data are used as input into the State and Local Governments Fiscal Outlook published by the Government Accountability Office. In addition, the data are used by the National Science Foundation as inputs into the State government R&D expenditures.

In recent years, state and local government financial information has garnered significant media attention and policy coverage. As such, timely state and local government finance data are critical in light of current financial conditions of state and local governments, as they provide insight into the complex nature and fiscal health of state and local government finances.

Affected Public: State, local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, Section 161, of the United States Code requires the Secretary of Commerce to conduct a census of governments every fifth year. Section 182 allows the Secretary to conduct annual surveys in other years. These authorizations include, but are not limited to, collecting and disseminating, ''data on taxes . . . governmental receipts, expenditures, indebtedness . . . of states, counties, cities and other governmental units.''

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

Dated: July 30, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–18411 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Civil Rights.

Title: Complaint of Employment Discrimination Based on Sexual Orientation against the Department of Commerce.

OMB Control Number: 0690–0015.

Form Number(s): CD–498, 498–A.

Type of Request: Regular Submission (extension of a currently approved information collection).

Burden Hours: 200.

Number of Respondents: 400.

Average Hours per Response: 30 minutes.

Needs and Use: Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1614.106 require that a person alleging discriminatory treatment by a federal agency must submit a signed statement that is sufficiently precise to identify the general actions or practices that form the bases of the complaint. Although complainants are not required to use the proposed form to file their complaints, the Office of Civil Rights (OCR) strongly encourages its use to ensure complete and accurate case processing and data collection.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRASubmission@omb.eop.gov* or faxed to (202) 395–5806.

Dated: July 30, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–18414 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD424

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of joint state/tribal hatchery plan and request for comment.

SUMMARY: Notice is hereby given that the Lower Elwha Klallam Tribe and the Washington Department of Fish and Wildlife (WDFW) have submitted five Hatchery and Genetic Management Plans, to be considered jointly, to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plans specify the propagation of five species of salmon and steelhead in the Elwha River of Washington state. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to whether implementation of the joint plans will appreciably reduce the likelihood of survival and recovery of Puget Sound Chinook salmon and Puget Sound steelhead.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on September 4, 2014.

ADDRESSES: Written comments on the proposed evaluation and pending determination should be addressed to the NMFS Sustainable Fisheries Division, 510 Desmond Dr., Suite 103, Lacey, WA 98503. Comments may be submitted by email. The mailbox address for providing email comments is: *ElwhaHatcheries.nwr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Elwha River hatchery programs.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at (360) 753–9579 or email: *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally produced and artificially propagated Puget Sound.
- Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated Puget Sound.
- Bull trout (*Salvelinus confluentus*): Threatened Puget Sound/Washington Coast.
- Pacific eulachon (*Thaleichthys pacificus*): Threatened southern DPS.

The Lower Elwha Klallam Tribe and the WDFW have submitted to NMFS five jointly operated hatchery programs in the Elwha River basin. The plans were submitted in August 2012, pursuant to limit 6 of the 4(d) Rule for the listed Puget Sound Chinook salmon evolutionarily significant unit (ESU) and listed Puget Sound steelhead distinct population segment (DPS). Two of the hatchery programs release ESA-listed Chinook salmon and steelhead, and three hatchery programs release non-ESA listed coho, fall chum, and pink salmon into the Elwha River watershed. All of the programs are currently operating, and all five hatchery programs raise fish native to the Elwha River basin. The current proposed evaluation was prepared to reevaluate the existing HGMPs in light of NMFS' decision to revise its Environmental Assessment as part of ongoing litigation.

As required by the ESA 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005), the Secretary is seeking public comment on his pending determination as to whether the joint plans for hatchery programs in the Elwha River, reflecting the existing HGMPs, clarifications to a component of steelhead and coho salmon smolt release practices, and some updated information including the role of weirs, would appreciably reduce the likelihood of survival and recovery of the ESA-listed Puget Sound salmon and steelhead.

Under section 4(d) of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule for salmon and steelhead, adopting in Limit 6 regulations necessary and advisable to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes (50 CFR 223.209).

This 4(d) Rule applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to artificial propagation activities if those activities are managed in accordance with a joint plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids. As specified in limit 6 of the 4(d) Rule, before the Secretary makes a decision on the joint plan, the public must have an opportunity to review and comment on the pending determination.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. Limit 6 of the updated 4(d) rule (50 CFR 223.203(b)(6)) further provides that the prohibitions of paragraph (a) of the updated 4(d) rule (50 CFR 223.203(a)) do not apply to activities associated with a joint state/tribal artificial propagation plan provided that the joint

plan has been determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000, as updated in 70 FR 37160, June 28, 2005).

Dated: July 31, 2014.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–18502 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO45

Marine Mammals; File No. 14241

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Peter Tyack, Ph.D., Woods Hole Oceanographic Institution, Woods Hole, MA, has been issued a minor amendment to Scientific Research Permit No. 14241–05.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The original permit (No. 14241), issued on July 15, 2009 (74 FR 36668) authorized conduct research on cetacean behavior, sound production, and responses to sound through July 31, 2014. The research methods include tagging marine mammals with an advanced digital sound recording tag that records the acoustic stimuli an animal hears and measures vocalization, behavior, and physiological parameters. Research also involves conducting sound playbacks in a carefully controlled manner and measuring animals' responses. The principal study species are beaked whales, especially Cuvier's beaked whale (*Ziphius cavirostris*), and large delphinids such as long-finned pilot whales (*Globicephala melas*), although other small cetacean species may also be studied. The locations for the field work are the Mediterranean Sea, waters off of the mid-Atlantic United States, and Cape Cod Bay. Amendments to the original permit added cetacean species, modified methodology protocols, and added study locations. The minor amendment (No. 14241–05) extends the duration of the permit through July 31, 2015, but does not change any other terms or conditions of the permit.

Dated: July 31, 2014.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–18503 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board; Requests for Nominations and Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of solicitation for nominations for potential National Sea Grant Advisory Board members and notice of public meeting.

SUMMARY: This notice responds to Section 209 of the Sea Grant Program Improvement Act of 1976 (Pub. L. 94–461, 33 U.S.C. 1128), which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the National Sea Grant Advisory Board, a Federal Advisory Committee that provides advice on the implementation of the National Sea Grant College Program. To apply for membership to the Advisory Board applicants should submit a current resume as indicated in the **ADDRESSES** section.

A cover letter highlighting specific areas of expertise relevant to the purpose of the Board is helpful, but not required. NOAA is an equal opportunity employer.

This notice also sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the National Sea Grant College Program Web site at *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx.*

DATES: Solicitation of nominations is open ended. Resumes may be sent to the address specified at any time. The announced meeting is scheduled for Sunday, September 7, 2014 from 8:30 a.m. to 4 p.m. EDT and Monday, September 8, 2014, from 9 a.m. to 12 p.m. EDT.

ADDRESSES: Nominations should be sent to Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 734–1082.

The September meeting will be held at the Hilton Clearwater Beach Hotel, 400 Mandalay Avenue, Clearwater Beach, Florida 33767.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 734–1082.

SUPPLEMENTARY INFORMATION:

Individuals Selected for Federal Advisory Committee Membership: Upon selection and agreement to serve on the National Sea Grant Advisory Board, you become a Special Government Employee (SGE) of the United States Government. According to 18 U.S.C. 202(a) an SGE(s) is an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, either on a fulltime or intermittent basis. Please be aware that after the selection process is complete, applicants selected to serve on the Board must complete the following actions before they can be appointed as a Board member:

(a) Security Clearance (on-line Background Security Check process and fingerprinting conducted through NOAA Workforce Management); and (b) Confidential Financial Disclosure Report—As an SGE, you are required to file a Confidential Financial Disclosure Report annually to avoid involvement in a real or apparent conflict of interest. You may find the Confidential Financial

Disclosure Report at the following Web site. *http://www.oge.gov/Forms-Library/OGE-Form-450-Confidential-Financial-Disclosure-Report/.*

Status: The meeting will be open to public participation with a 15-minute public comment period on Tuesday, September 8 at 10:45 a.m. (check agenda on Web site to confirm time).

The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by Friday, August 29, 2014 to provide sufficient time for the Board review. Written comments received after Friday, August 29, 2014 will be distributed to the Board, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-serve basis.

SUPPLEMENTARY INFORMATION: Established by Section 209 of the Act and as amended the National Sea Grant College Program Amendments Act of 2008 (Pub. L. 110–394), the duties of the Board are as follows:

(1) In general. The Board shall advise the Secretary and the Director concerning:

(A) Strategies for utilizing the Sea Grant College Program to address the Nation's highest priorities regarding the understanding, assessment, development, management, utilization, and conservation of ocean, coastal, and Great Lakes resources;

(B) The designation of Sea Grant Colleges and Sea Grant Institutes; and

(C) Such other matters as the Secretary refers to the Board for review and advice.

(2) Biennial Report. The Board shall report to the Congress every two years on the state of the National Sea Grant College Program. The Board shall indicate in each such report the progress made toward meeting the priorities identified in the strategic plan in effect under section 204 (c). The Secretary shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties under this title.

The Board shall consist of 15 voting members who shall be appointed by the Secretary. The Director and a director of a Sea Grant program who is elected by the various directors of Sea Grant programs shall serve as nonvoting members of the Board. Not less than 8 of the voting members of the Board shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science.

The other voting members shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, marine affairs and resource management, coastal management, extension services, State government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, management, utilization, or conservation of ocean, coastal, and Great Lakes resources. No individual is eligible to be a voting member of the Board if the individual is (A) the director of a Sea Grant College or Sea Grant Institute; (B) an applicant for, or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 [33 USCS § 1124]; or (C) a full-time officer or employee of the United States.

The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Board members are appointed for a 4-year term.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Elizabeth Ban, Designated Federal Officer at 301–734–1082 by Monday, August 25, 2014.

Dated: July 30, 2014.

Jason Donaldson,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–18521 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD416

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seismic Surveys in Cook Inlet, Alaska

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from Apache Alaska Corporation (Apache) for authorization to take marine mammals incidental to oil and gas exploration seismic operations in Cook Inlet, AK, from March 2015 through February 2020. Pursuant to the Marine Mammal Protection Act (MMPA) implementing regulations, NMFS is announcing our receipt of Apache's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on Apache's application and request.

DATES: Comments and information must be received no later than September 4, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Nachman@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

A copy of Apache's application may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, 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 specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to

harassment for no more than 1 year, 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.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On July 11, 2014, NMFS received a complete application from Apache requesting authorization for the take of six marine mammal species incidental to an oil and gas exploration seismic program in Cook Inlet, AK, over the course of 5 years, which would necessitate the promulgation of 5-year regulations. The purpose of the proposed project is to explore for and develop oil and gas resources in Cook Inlet. The following specific aspects of the activities are likely to result in the take of marine mammals: seismic airgun operations. Apache requests authorization to take six marine mammal species by Level B harassment only: beluga whale (*Delphinapterus leucas*); killer whale (*Orcinus orca*); harbor porpoise (*Phocoena phocoena*); gray whale (*Eschrichtius robustus*); harbor seal (*Phoca vitulina richardsi*); and Steller sea lion (*Eumetopias jubatus*). Injury or mortality is unlikely during the proposed seismic survey, and take by Level A harassment (including injury) or mortality is not requested in Apache's application.

Specified Activities

In the application submitted to NMFS, Apache requests authorization to take marine mammals incidental to a seismic survey program in Cook Inlet, AK. Apache proposes to conduct seismic operations in both intertidal and offshore areas, utilizing two synchronized source vessels and nodal technology. Sections 2 and 3 of Apache's application (see **ADDRESSES**) describe the activities in detail, as well as the timing and location.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Apache's request (see **ADDRESSES**). All information, suggestions, and comments related to Apache's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by Apache's activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: July 30, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–18444 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, August 15, 2014.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, Enforcement Matters, and Examinations. In the event that the times, dates, or locations of this or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher J. Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2014–18559 Filed 8–1–14; 11:15 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Financial Management Survey, OMB No. 3045–0102, for review in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Douglas Godesky, at 202–606–6967 or email to *dgodesky@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on April 16, 2014. This comment period ended June 16, 2014. No public comments were received from this Notice.

Description: CNCS is seeking approval of its Financial Management Survey. The Financial Management Survey collects information from new grantees about their financial management and internal control systems so that CNCS can determine if appropriate systems are in place to manage federal grant funds or, if not, to identify training and technical assistance a new grantee may need to develop and implement appropriate systems. CNCS requires new grantees which have never before received CNCS funds to complete the form. Completion of this survey is required as an element of CNCS's risk assessment process, but is independent from the competitive grant process.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Financial Management Survey Form.

OMB Number: 3045–0102.

Agency Number: None.

Affected Public: Organizations that are first time grant recipients to CNCS.

Total Respondents: 20 annually.

Frequency: Once.

Average Time per Response: Averages 1.75 hours.

Estimated Total Burden Hours: 35 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: July 31, 2014.

Douglas J. Godesky,

Acting Director, Office of Grants Management.

[FR Doc. 2014–18522 Filed 8–4–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposals From Non-Federal Interests for Proposed Feasibility Studies and Proposed Modifications to Authorized Water Resources Development Projects or Feasibility Studies for Inclusion in the U.S. Army Corps of Engineers (USACE) Annual Report

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Water Resources Reform and Development Act of 2014 requires that the USACE publish a notice in the **Federal Register** to request proposals from non-federal interests for feasibility studies and modifications to authorized USACE water resources development projects or feasibility studies. This notice is the request for proposals for inclusion in the Annual Report to be issued in February 2015.

DATES: Proposals must be submitted by December 3, 2014.

ADDRESSES: Submit proposals to: U.S. Army Corps of Engineers, Attn: CECW–CE (Lisa Kiefel), 441 G Street NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Lisa Kiefel, Planning Portfolio Manager, Headquarters, USACE, Washington, DC at 202–761–0626.

SUPPLEMENTARY INFORMATION: Section 7001 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) requires the U.S. Army Corps of Engineers (USACE) to publish a notice in the **Federal Register** to request proposals from non-federal interests for proposed feasibility studies and proposed modifications to authorized USACE water resources development projects or feasibility studies. Proposals should include the following information:

1. Provide the name of all non-Federal interests planning to act as the sponsor, including any non-Federal interest that has contributed or is expected to contribute toward the non-Federal share of the proposed feasibility study or modification.
2. State if this proposal is for a feasibility study or a modification to an authorized USACE project or feasibility study and, if a modification, specify the authorized project or study.
3. State the project purpose of the proposed study or modification.
4. Provide an estimate, to the extent practicable, of the total cost of the proposed study or modification.
5. Describe, to the extent practicable, the anticipated monetary and non-monetary benefits of the proposal including benefits to the protection of human life and property; improvement to transportation; the national economy; the environment; or the national security interests of the United States.
6. Describe if local support exists for the proposal.
7. State if the non-Federal interest has the financial ability to provide for the required cost share.
8. Submit a letter or statement of support from each associated non-Federal interest.

All provided information may be included in the Annual Report. Please do not include information that is Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Process: Proposals received within the time frame set forth in this notice will be reviewed by the Secretary of the Army to determine if the proposals meet the following criteria:

1. Are related to the missions and authorities of the USACE;
2. Require specific congressional authorization, including by an Act of Congress;
3. Have not been congressionally authorized;
4. Have not been included in any previous annual report; and
5. If authorized, could be carried out by the USACE.

The Secretary shall include in the Annual Report a certification of the proposals meeting criteria established by the Congress. Those proposals that do not meet the criteria will be included in an Appendix to the Annual Report that includes a description of why those proposals did not meet such criteria.

Dated: July 31, 2014.

Steven L. Stockton,

Director of Civil Works.

[FR Doc. 2014–18495 Filed 8–4–14; 8:45 am]

BILLING CODE 3712–58–P

DEPARTMENT OF EDUCATION

Application for New Awards; Technical Assistance on State Data Collection—IDEA Data Management Center

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

ACTION: Notice.

Overview Information

Technical Assistance on State Data Collection—IDEA Data Management Center Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.373M.

DATES:

Application Available: August 5, 2014.

Deadline for Transmittal of Applications: September 4, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the Individual

with Disabilities Education Act (IDEA) data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve funds appropriated under Part B of the IDEA to provide technical assistance (TA) activities authorized under section 616(i) of IDEA. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of IDEA section 616 are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under IDEA Parts B and C, which include the data collection requirements in IDEA sections 616 and 618.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

IDEA Data Management Center

The purpose of this priority is to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Center) to achieve, at a minimum, the following expected outcomes: (a) Improve States' data management procedures and data systems architecture to build data files and reports to improve States' capacity to meet the Part B reporting requirements under sections 616 and 618 of IDEA; and (b) improve States' capacity to utilize their statewide longitudinal data systems (SLDS) to report high-quality data under IDEA Part B as required under sections 616 and 618 of IDEA. The Center's work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA and will not provide the Department with access to child-level data.

Project Activities. To meet the requirements of this priority, the IDEA Data Management Center, at a minimum, must:

Knowledge Development Activities in Year One

(a) Document the methods of collecting, processing, and reporting the IDEA Part B section 616 and 618 data for the 60 State educational agencies (SEAs). The documentation must align the data used by the States to meet the Part B IDEA data to the Common Education Data Standards (CEDS).

(b) Analyze the methods of collecting, processing, and reporting the Part B IDEA data for commonalities and challenges and identify States in need of intensive or targeted TA.

Technical Assistance and Dissemination Activities

(a) Provide intensive TA [1] to at least 10 States to improve their ability to utilize SLDS as sources for reporting Part B data required under sections 616 and 618 of IDEA. The Center must use information obtained through the activities described under paragraph (a) of the *Knowledge Development Activities in Year One* section of this priority to inform the intensive TA, which must be focused on States that are not using their SLDS to report their IDEA Part B section 616 and 618 data.

Note: Applicants must describe the methods and criteria they will use to recruit and select States for intensive TA. The Center must obtain approval from the Office of Special Education Programs (OSEP) on the final selection of intensive TA States.

(b) Provide a range of targeted and general TA products and services for improving States' capacity to report high-quality Part B data required under sections 616 and 618 of IDEA. Such TA must include, at a minimum:

(1) Working with the Department to develop open source electronic tools to assist States in building ED*Facts* data files and reports that can be submitted to the Department and made available to the public. The tools must utilize CEDS and meet all States' and entities' needs associated with reporting the Part B data required under sections 616 and 618 of IDEA;

(2) Developing a plan to maintain the appropriate functionality of the open source electronic tools described in paragraph (1) as changes are made to data collections, reporting requirements, file specifications, and CEDS;

(3) Assisting States in preparing their data in order to use the open source electronic tools (e.g., transforming data into a data store);

(4) Conducting training with State staff to use the open source electronic tools;

(5) Developing CEDS ''Connections'' [2] to calculate metrics needed to report the Part B data required under sections 616 and 618 of IDEA; and

(6) Developing white papers and presentations that include tools and solutions to challenges in data management procedures and data system architecture for reporting the Part B data required under sections 616 and 618 of IDEA.

Coordination Activities

(a) Communicate and coordinate, on an ongoing basis, with other Department-funded projects, including those providing data-related support to States, such as the IDEA Data Center (IDC), the Center for IDEA Early Childhood Data Systems (DaSy Center), the CEDS initiative, the SLDS program, the Privacy Technical Assistance Center, and the Center for Systemic Improvement (CSI) (if funded); and

(b) Maintain ongoing communication with the OSEP project officer.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority. OSEP encourages innovative approaches to meet these requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address State challenges in collecting, analyzing, and accurately reporting valid and reliable IDEA data on State data management procedures and data systems architecture and in building ED*Facts* data files and reports for timely and accurate reporting of the IDEA data to the Department and the public. To meet this requirement the applicant must—

(i) Demonstrate knowledge of IDEA data collections and ED*Facts* file specifications for the IDEA data collection; and

(ii) Present information about the difficulties that States have encountered in the collection and submission of valid and reliable IDEA data;

(2) Result in improved IDEA data collection and reporting.

(b) Demonstrate, in the narrative section of the application under ''Quality of the Project Services,'' how the proposed project will—

(1) Achieve the project's goals, objectives, and intended outcomes. To

[1] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[2] For more information on CEDS Connections, see: *https://ceds.ed.gov/connect.aspx.*

meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) The logic model by which the proposed project will achieve its intended outcomes;

(2) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among them, and any empirical support for this framework;

(3) Be based on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of IDEA data collection strategies, data management procedures, and data systems architectures;

(ii) How the current research about adult learning principles and implementation science will inform the proposed TA; and

(iii) How the proposed project will incorporate current research and evidence-based practices in the development and delivery of its products and services;

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the project. To address this requirement, the applicant must describe—

(i) How it will develop knowledge of States' data management processes and data systems architecture;

(ii) How it will facilitate and support the leadership role State staff will take in improving States' data management procedures and data systems architecture;

(iii) Its proposed approach to universal, general TA [3] for the 60 SEAs;

(iv) Its proposed approach to targeted, specialized TA,[4] which must identify—

(A) The intended recipients of the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local educational agency (LEA) level, as appropriate;

(v) Its proposed approach to intensive, sustained TA, which must identify—

(A) The intended recipients of the products and services under this approach;

(B) Its proposed approach to measure the readiness of the SEAs to work with the proposed project including the SEAs' commitment to the initiative, fit of the initiatives, current infrastructure, available resources, and ability to build capacity at the LEA level, as appropriate; and

(C) Its proposed plan for assisting SEAs to build training systems that include professional development based on adult learning principles and coaching.

(5) Develop products and implement services to maximize the project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes; and

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how—

(1) The proposed project will collect and analyze data on specific and measurable goals, objectives, and intended outcomes of the project. To address this requirement, the applicant must describe its—

(i) Proposed evaluation methodologies, including instruments, data collection methods, and analyses; and

(ii) Proposed standards of effectiveness;

(2) The proposed project will use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving the intended outcomes; and

(3) The methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) How key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include in Appendix A of the application a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589;*

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

(2) Include in Appendix A of the application a conceptual framework for the project;

(3) Include in Appendix A of the application person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(4) Include in the budget funding for attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' meeting in Washington, DC, to occur every other year beginning with the meeting scheduled for Summer, 2016;

(iii) Two annual two-day trips for Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive review meeting in Washington, DC, during the last half of the second year of the project period;

(5) Include in the budget a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a Web site that meets government or industry-recognized standards for accessibility.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), and 1442.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR section 300.702. (d) The notice of final priority, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $2,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $2,500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitation Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding under this program must involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.373M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit and double-spacing requirement does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the page limit and double-spacing requirement does apply to the application narrative (Part III), including all text in charts, tables, figures, graphs, and screen shots.

We will reject your application if you exceed the page limit in the application narrative section; or if you apply standards other than those specified in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: August 5, 2014.

Deadline for Transmittal of Applications: September 4, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make an award by the end of FY 2014.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the IDEA Data Management Center competition, CFDA number 84.373M, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the IDEA Data Management Center competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.373, not 84.373M).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW., Room 4071, Potomac Center Plaza (PCP), Washington, DC 20202–2600. FAX: (202) 245–7617.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.373M), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by

hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.373M), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR part 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the IDEA Data Management Center is to provide TA that will improve the capacity of States to meet IDEA data collection and reporting requirements. Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. We are proposing to use the measures established for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program to assess the performance of the Technical Assistance on State Data Collection program. See *www2.ed.gov/fund/grant/apply/osep/funding.html.* The Department will use these measures to assess the extent to which this program provides high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve State data capacity to collect and report IDEA data. Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation

grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW., Room 4071, PCP, Washington, DC 20202–2600. Telephone: (202) 245–6028 or by email: *Meredith.Miceli@ed.gov.*

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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

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

Dated: July 31, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–18476 Filed 8–4–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–12–000]

Commission Information Collection Activities; FERC Form 2, FERC Form 2A and FERC–523: Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collections FERC Form 2 (Major Natural Gas Pipeline Annual Report), FERC Form 2A (Non-major Natural Gas Pipeline Annual Report), and FERC–523 (Applications for Authorization for Issuance of Securities or the Assumption of Liabilities), to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (79 FR 27589, May 14, 2014) requesting public comments. The Commission received no comments on the FERC Form 2, FERC Form 2A, or FERC–523 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by September 4, 2014.

ADDRESSES: Comments filed with OMB, identified by the OMB Control Nos. 1902–0028 (FERC Form 2), 1902–0030 (FERC Form 2A), or 1902–0043 (FERC–523) should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. IC14–12–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/HandDelivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC Form 2, Annual Report of Major Natural Gas Companies, & FERC Form 2A, Annual Report of Nonmajor Natural Gas Companies

OMB Control Nos.: 1902–0028 & 1902–0030.

Abstract: Pursuant to sections 8, 10 and 14 of the National Gas Act (NGA), (15 U.S.C. 717g–717m, Pub. L. 75–688), the Commission is authorized to make investigations and collect and record data, to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for purposes of administering the NGA. The Commission includes the filing requirements in 18 CFR 260.1 and 260.2.

The forms provide information concerning a company's past performance. The information is compiled using a standard chart of accounts contained in the Commission's

Uniform System of Accounts (USofA).[1] The forms contain schedules which include a basic set of financial statements: Comparative Balance Sheet, Statement of Income and Retained Earnings, Statement of Cash Flows, and the Statement of Comprehensive Income and Hedging Activities. Supporting schedules containing supplementary information are filed, including revenues and the related quantities of products sold or transported; account balances for various operating and maintenance expenses; selected plant cost data; and other information.

The information collected in the forms is used by Commission staff, state regulatory agencies and others in the review of the financial condition of regulated companies. The information is also used in various rate proceedings, industry analyses and in the Commission's audit programs and, as appropriate, for the computation of annual charges based on Page 520 of the forms. The Commission provides the information to the public, interveners and all interested parties to assist in the proceedings before the Commission.

Print versions of the Forms 2 and 2A are located on the Commission's Web site at *http://www.ferc.gov/docs-filing/forms.asp#2.*

Type of Respondent: Each natural gas company whose combined gas transported or stored for a fee exceed 50 million dekatherms in each of the previous three years must file the Form 2. Each natural gas company not meeting the filing threshold for the Form 2 but having total gas sales or volume transactions exceeding 200,000 dekatherms in each of the previous three calendar years must submit the Form 2A.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collections as:

FERC FORM NO. 2: ANNUAL REPORT OF MAJOR NATURAL GAS COMPANIES AND FERC FORM NO. 2A: ANNUAL REPORT OF NONMAJOR NATURAL GAS COMPANIES

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response [2] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC Form No. 2	92	1	92	1,629 $114,844.50	149,868 $10,565,694	$114,844.50
FERC Form No. 2A	66	1	66	253.39 $17,864	16,724 [3] $1,179,024	$17,864

FERC–523, Applications for Authorization for Issuance of Securities or the Assumption of Liabilities

OMB Control No.: 1902–0043.

Abstract: Under Federal Power Act (FPA) section 204, 16 U.S.C. 824c, no public utility or licensee shall issue any security, or assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of another person, until the public utility applies for and receives Commission approval by order authorizing the issue or assumption of the liability. The Commission issues an order if it finds that such issue or assumption (a) is for lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant as a public utility, and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.

The Commission uses the information contained in filings to determine its acceptance and/or rejection of applications for authorization to either issue securities or to assume an obligation or liability by the public utilities and their licensees who submit these applications.

The specific application requirements and filing format are found at 18 CFR part 34; and 18 CFR 131.43 and 131.50. The information is filed electronically.

Type of Respondent: Public utilities subject to the FPA.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–523: APPLICATIONS FOR AUTHORIZATION FOR ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [4] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC–523	56	[5] 1.6	90	500 $35,250	45,000 $3,172,500	$56,652

[1] *See* 18 CFR part 201.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per Hour = Average Cost per Response. The hourly cost figure of $70.50 is the average FERC employee wage plus benefits. We assume that respondents earn at a similar rate.

[3] This figure was listed as ''$1,179,042'' in the previous public notice. The figure reported here is correct.

[4] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $70.50 per Hour = Average Cost per Response. The hourly cost figure of $70.50 is the average FERC employee wage plus benefits. We assume that respondents earn at a similar rate.

[5] Some respondents may be required to provide more than one response.

Dated: July 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18490 Filed 8–4–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–485–000]

Texas Gas Transmission, LLC; Notice of Effectiveness of Withdrawal of Application and Termination of Proceeding

On June 3, 2014, Texas Gas Transmission, LLC filed a Notice of Withdrawal to withdraw its application under section 7(b) of the Natural Gas Act[1] for authorization to abandon by sale to an affiliate, Boardwalk Pipelines, LP, approximately 568 miles of 26-inch-diameter pipeline on its mainline system from Eunice, Louisiana, through Mississippi and Tennessee to Hardinsburg, Kentucky, as well as associated pipeline facilities in Docket No. CP13–485–000.

No motion in opposition to the notice was filed with the Commission within 15 days of the filing and the Commission did not disallow the withdrawal within that period. Therefore, pursuant to 18 CFR 385.216(b) (2014), the withdrawal became effective on June 18, 2014, 15 days from the date of filing of the notice, and the proceeding was terminated.

Dated: July 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18486 Filed 8–4–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–118–000.

Applicants: NaturEner Glacier Wind Energy 1, LLC, NaturEner Glacier Wind Energy 2, LLC, NaturEner Rim Rock Wind Energy, LLC, NaturEner Montana Wind Energy, LLC, NaturEner Power Watch, LLC, NaturEner Wind Watch, LLC, Morgan Stanley Renewable Development Fund.

Description: Application for Authorization under Section 203 of the FPA, Request for Expedited Consideration, Confidential Treatment and Waivers of NaturEner Glacier Wind Energy 1, LLC, et. al.

Filed Date: 7/28/14.

Accession Number: 20140728–5173.

Comments Due: 5 p.m. ET 8/18/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3297–003*; ER11–2664–008*.

Applicants: Powerex Corp.

Description: Amendment and Supplement to December 31, 2013 Updated Market Power Analysis for the Northwest Region of Powerex Corp.

Filed Date: 7/25/14.

Accession Number: 20140725–5144.

Comments Due: 5 p.m. ET 8/15/14.

Docket Numbers: ER10–3319–015.

Applicants: Astoria Energy II LLC.

Description: Compliance Filing to Electric Tariff to be effective 7/30/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5075.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER11–4333–001.

Applicants: Astoria Energy LLC.

Description: Compliance Filing for Electric Tariff to be effective 7/30/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5071.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–1970–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–07–29 Compliance re Prohibited Investments to be effective 7/1/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5028.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–2223–000.

Applicants: Sabine Cogen, LP.

Description: Amendment to June 19, 2014 Sabine Cogen, LP tariff filing.

Filed Date: 7/28/14.

Accession Number: 20140728–5168.

Comments Due: 5 p.m. ET 8/18/14.

Docket Numbers: ER14–2322–000.

Applicants: Chestnut Flats Lessee, LLC.

Description: Supplement to June 30, 2013 Triennial Market Power Update for the Northeast Region of Chestnut Flats Lessee, LLC.

Filed Date: 7/25/14.

Accession Number: 20140725–5065.

Comments Due: 5 p.m. ET 8/29/14.

Docket Numbers: ER14–2517–000.

Applicants: PacifiCorp.

Description: BPA AC Intertie Agreement 11th Revised to be effective 9/27/2014.

Filed Date: 7/28/14.

Accession Number: 20140728–5151.

Comments Due: 5 p.m. ET 8/18/14.

Docket Numbers: ER14–2518–000.

Applicants: New York Independent System Operator, Inc.

Description: NYISO Tariff Amendments to Define Certain Outage States and Associated Requirement to be effective 11/1/2014.

Filed Date: 7/28/14.

Accession Number: 20140728–5152.

Comments Due: 5 p.m. ET 8/18/14.

Docket Numbers: ER14–2519–000.

Applicants: New England Power Company.

Description: Notice of Cancellation of New England Power Company Service Agreement for Network Integration Transmission Service with The Narragansett Electric Company.

Filed Date: 7/28/14.

Accession Number: 20140728–5169.

Comments Due: 5 p.m. ET 8/18/14.

Docket Numbers: ER14–2520–000.

Applicants: NorthWestern Corporation.

Description: Revisions to Attachment M (LGIP–LGIA) and Attachment N (SGIA) to Montana OATT to be effective 9/27/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5029.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–2521–000.

Applicants: New England Power Company.

Description: Notice of Cancellation of New England Power Company Interconnection Agreement Rate Schedule No. 501 with Dighton Power Associates Limited Partnership.

Filed Date: 7/29/14.

Accession Number: 20140729–5037.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–2522–000.

Applicants: MATL LLP.

Description: Compliance with Order 792 to be effective 8/1/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5055.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–2523–000.

Applicants: PJM Interconnection, L.L.C.

Description: 2nd Quarter 2014 Updates to OA and RAA Membership Lists to be effective 6/30/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5067.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–2524–000.

Applicants: California Independent System Operator Corporation.

Description: 2014–07–29_AnaheimMSSA to be effective 9/28/2014.

[1] 15 U.S.C. 717f(c) (2012).

Filed Date: 7/29/14.

Accession Number: 20140729–5069.

Comments Due: 5 p.m. ET 8/19/14.

Docket Numbers: ER14–2525–000.

Applicants: PacifiCorp.

Description: Termination of Tri-State Amended and Restated Transmission Agreement to be effective 10/1/2014.

Filed Date: 7/29/14.

Accession Number: 20140729–5072.

Comments Due: 5 p.m. ET 8/19/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA14–2–000.

Applicants: First Solar, Inc.

Description: Quarterly Land Acquisition Report of First Solar, Inc.

Filed Date: 7/28/14.

Accession Number: 20140728–5165.

Comments Due: 5 p.m. ET 8/18/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF14–682–000.

Applicants: President and Fellows of Harvard College.

Description: Form 556 of President and Fellows of Harvard College.

Filed Date: 7/28/14.

Accession Number: 20140728–5086.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 29, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–18475 Filed 8–4–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of the Draft Environmental Impact Statement for the Susquehanna River Hydroelectric Projects

York Haven Power Company.	Project No. 1888–030—Pennsylvania.
Exelon Generation Company.	Project No. 2355–018—Pennsylvania/Maryland.
	Project No. 405–106—Maryland.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the applications for license for the York Haven Hydroelectric Project (FERC No. 1888), the Muddy Run Pumped Storage Project (FERC No. 2355), and the Conowingo Hydroelectric Project (FERC No. 405) and prepared a draft multi-project environmental impact statement (EIS) for the projects.

The York Haven Project is located on the Susquehanna River at river mile (RM) 55 in the city of York, in York, Dauphin, and Lancaster counties, Pennsylvania. The project does not occupy any federal lands. The Muddy Run and Conowingo projects are located on the Susquehanna River at RM 22 and RM 10, respectively, in Lancaster and York counties, Pennsylvania, and Cecil and Harford counties, Maryland. Conowingo Pond, the reservoir for the Conowingo Project, acts as the lower reservoir for the Muddy Run Project. The Muddy Run Project also includes an upper reservoir for pumped storage operation. The projects do not occupy any federal lands.

The draft EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the York Haven, Muddy Run, and Conowingo projects. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff.

A copy of the draft EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by Monday, September 29, 2014, and should reference Project Nos. 1888–030, 2355–018, and 405–106. The Commission strongly encourages electronic filing. Please file comments using the Commission's efiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

Commission staff will hold three public meetings for the purpose of receiving comments on the draft EIS. The daytime meeting will focus on resource agency, Indian tribe, and non-governmental organization comments, while the evening meetings are primarily for receiving input from the public. All interested individuals and entities will be invited to attend one or all of the public meetings. A notice detailing the exact date, time, and location of the public meetings will be forthcoming.

For further information, please contact Emily Carter at (202) 502–6512 or at *emily.carter@ferc.gov.*

Dated: July 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18487 Filed 8–4–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP12–509–000; CP12–29–000]

Freeport LNG Liquefaction Project, Phase II Modification Project; Notice of Availability of Draft General Conformity Analysis

In accordance with the National Environmental Policy Act of 1969, the Clean Air Act and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, Commission staff has prepared this draft General Conformity Determination (GCD) for the Freeport LNG Liquefaction and Phase II Modification Projects (collectively called Projects) to assess the potential air quality impacts associated with the construction and operation of liquefied natural gas facilities proposed by Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (collectively known as Freeport LNG).

The FERC staff concludes that the Project will achieve conformity in Texas and has received concurrence from the Texas Council on Environmental Quality. FERC staff will issue a final GCD to address any changes necessary and respond to comments. If no new significant comments are received by August 29, 2014, FERC staff will issue a public notice identifying this GCD as final.

Freeport LNG's proposed development is composed of multiple components in Brazoria County, Texas. The main Liquefaction Plant, located on Quintana Island, will be three propane pre-cooled mixed refrigerant trains, each with a capacity of 4.4 million metric tons per year of liquefied natural gas (LNG) for export, which equates to a total liquefaction capacity of approximately 1.8 billion cubic feet per day of natural gas. The trains and their support facilities are collectively referred to as the Liquefaction Plant.

In addition to the Liquefaction Plant described above, Freeport LNG proposes to construct various facilities, both at and adjacent to the Quintana Island Terminal and beyond Quintana Island, to support the liquefaction and export operation. These facilities include a natural gas Pretreatment Plant located about 3.5 miles north of the Terminal, and several interconnecting pipelines and utility lines called the Pipeline/Utility Line System.

In addition, for additional information on the Projects, the public can view the final environmental impact statement on our Web site at *http://www.ferc.gov/industries/gas/enviro/eis/2014/06-16-14-eis.asp.*

Any person wishing to comment on the draft GCD may do so. To ensure that your comments are properly recorded and considered prior to issuance of the final GCD, it is important that we receive your comments in Washington, DC on or before August 29, 2014.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the docket numbers (CP12–509–000, CP12–29–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Eric Tomasi by telephone at 202–502–8097 or by email at *Eric.Tomasi@ferc.gov.*

Dated: July 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18489 Filed 8–4–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12962–002; Project No. 12958–002

Newburgh Hydro, LLC; Uniontown Hydro, LLC; Notice of Teleconference

a. *Date and Time of Meeting:* Thursday, August 14, 2014 at 10:00 a.m. (Eastern Daylight Time).

b. *FERC Contact:* Brandi Sangunett, Phone: (202) 502–8393, Email: *brandi.sangunett@ferc.gov*

c. *Purpose of Meeting:* To discuss the U.S. Fish and Wildlife Service's request for additional freshwater mussel surveys at the proposed Uniontown Hydroelectric Project filed on June 26, 2014.

d. *Proposed Agenda:*

1. Introduction
2. Freshwater Mussel Survey
3. Summary

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Brandi Sangunett by August 7, 2014, to RSVP and to receive specific instructions on how to participate.

Dated: July 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–18488 Filed 8–4–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9914–47–OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Courtney Kerwin (202) 566–1669, or email at *kerwin.courtney@epa.gov* and

please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests OMB Approvals

EPA ICR Number 2384.03; NSPS for Commercial and Industrial Solid Waste Incineration (CISWI) units; 40 CFR part 60, subparts A and CCCC; was approved on 06/03/2014; OMB Number 2060–0662; expires on 06/30/2017; Approved without change.

EPA ICR Number 0983.14; NSPS for Equipment Leaks of VOC in Petroleum Refineries; 40 CFR part 60, subparts GGG and GGGa; was approved on 06/03/2014; OMB Number 2060–0067; expires on 06/30/2017; Approved without change.

EPA ICR Number 2485.02; NSPS for Kraft Pulp Mills for which Construction, Reconstruction or Modification Commenced after May 23, 2103; 40 CFR part 60, subpart BBa; was approved on 06/03/2014; OMB Number 2060–0690; expires on 06/30/2017; Approved without change.

EPA ICR Number 2330.02; Pesticide Registration Fees Program; was approved on 06/09/2014; OMB Number 2070–0179; expires on 06/30/2017; Approved without change.

EPA ICR Number 1764.06; National Volatile Organic Compound Emission Standards for Consumer Products; 40 CFR part 59, subpart C; was approved on 06/11/2014; OMB Number 2060–0348; expires on 06/30/2017; Approved without change.

EPA ICR Number 1500.08; National Estuary Program (Renewal); 40 CFR part 35; was approved on 06/11/2014; OMB Number 2040–0138; expires on 06/30/2017; Approved without change.

EPA ICR Number 1854.09; The Consolidated Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (Renewal); 40 CFR part 65; part 60, subparts A, Ka, Kb, W, Wa, DDD, III, NNN, RRR; part 61, subparts A, BB, Y, V; part 63, subparts A, F, G, H, I; was approved on 06/16/2014; OMB Number 2060–0443; expires on 06/30/2017; Approved without change.

EPA ICR Number 1632.04; Standards for Pesticide Containers and Containment; 40 CFR parts 156 and 165; was approved on 06/16/2014; OMB Number 2070–0133; expires on 06/30/2017; Approved without change.

EPA ICR Number 0138.10; Modification of Secondary Treatment Requirements for Discharges into Marine Waters (Renewal); 40 CFR part 125; was approved on 06/16/2014; OMB Number 2040–0088; expires on 06/30/2017; Approved without change.

EPA ICR Number 0938.18; General Administrative Requirements for Assistance Programs (Renewal); 40 CFR part 31; was approved on 06/30/2014; OMB Number 2030–0020; expires on 06/30/2017; Approved with change.

Short Term Extension of Expiration Date

EPA ICR Number 0143.13; Recordkeeping Requirements for Producers, Registrants, and Applicants of Pesticides and Pesticide Devices under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Renewal); a short term extension of the expiration date was granted by OMB on 06/30/2014; OMB Number 2070–0028; expires on 07/31/2014.

Comment Filed

EPA ICR Number 1176.10; NSPS for New Residential Wood Heaters; in 40 CFR part 60, subpart AAA; OMB filed comment on 06/10/2014.

Spencer W. Clark,

Acting Director, Collections Strategies Division.

[FR Doc. 2014–18452 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0324; FRL–9914–66–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Marine Tank Vessel Loading Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Marine Tank Vessel Loading Operations (40 CFR part 63, subpart Y) (Renewal)'' (EPA ICR No. 1679.09, OMB Control No. 2060–0289), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through August 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 35023) on June 11, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 4, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0324, to: (1) EPA online using *www.regulations.gov* (our preferred method); or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Program Division, Office of Compliance, mail code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *www.epa.gov/dockets.*

Abstract: This rule applies to marine tank vessel loading operations that are major sources of HAP, have an annual throughput of 10 million or more barrels of gasoline, and/or have an annual throughput of 200 million or more barrels of crude oil. This ICR also covers owners or operators of existing MTVLO, that emit less than 10 tons per year of each individual HAP, and less than 25 tons/year of all HAP combined, located at major sources of HAP that loads more than 1 million barrels/yr of gasoline, as

well as owners or operators of existing off-shore terminals that load gasoline.

Form Numbers: None.

Respondents/affected entities: Owners or operators of marine tank vessel loading operations.

Respondent's obligation to respond: Mandatory (40 CFR Part 63, Subpart Y).

Estimated number of respondents: 804 (total).

Frequency of response: Initially and annually.

Total estimated burden: 9,892 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $967,810 (per year), including annualized capital and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in the total estimated respondent labor burden and cost as currently identified in the OMB Inventory of Approved Burdens. The labor burden increase is the direct result of adding affirmative defense to this ICR renewal. There is an increase in the cost burden, however, it is due primarily to the use of updated labor rates. This ICR references labor rates from the Bureau of Labor Statistics to calculate the respondent cost burden.

Spencer W. Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–18451 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0074; FRL—9913–54–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Renewal) '' (EPA ICR No. 2434.23, OMB Control No. 2010–0042 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through September 30, 2014. Public comments were previously requested via the **Federal Register** (79 FR 22816) on April 24, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 4, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OA–2006–0074, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michelle Mandolia, Office of Police, (1807T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–2198; fax number: 202–566–2211; email address: *Mandolia.Michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The Authorizing Statute is EO12862—Setting Customer Service Standards.

Form Numbers: None.

Respondents/affected entities: Individuals, Private Sector, State, Local or Tribal Governments.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 6,000.

Frequency of response: Once.

Total estimated burden: 1,500 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $0 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 114 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an increased use of the generic clearance over the past three years.

Spencer W. Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–18471 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2013–0788; FRL–9914–65–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington (EPA ICR No. 2020.06, OMB Control No. 2060–0558) to the Office of Management

and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2014. Public comments were previously requested via the **Federal Register** (79 FR 14704) on March 17, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 4, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0788, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *koprowski.paul@epa.gov,* or by mail to: Paul Koprowski, Environmental Protection Agency Region 10, Office of Air, Waste and Toxics, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR 97205; and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Paul Koprowski, Environmental Protection Agency Region 10, Office of Air, Waste and Toxics, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR, 97205; telephone number: (503) 326–6363; fax number: 503–326–3399; email address: *koprowski.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA promulgated Federal Implementation Plans (FIPs) under the Clean Air Act for Indian reservations located in Idaho, Oregon, and Washington in 40 CFR part 49 (70 FR 18074, April 8, 2005). The FIPs in the final rule, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), include information collection requirements associated with the fugitive particulate matter rule in § 49.126, the woodwaste burner rule in § 49.127; the rule for limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA uses this information to manage the activities and sources of air pollution on the Indian reservations in Idaho, Oregon, and Washington. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, track emissions trends and changes, identify potential air quality problems, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory. Regulated entities can assert claims of business confidentiality and EPA will address these claims in accordance with the provisions of 40 CFR part 2, subpart B.

Respondents/Affected Entities: Entities potentially affected by this action include owners and operators of emission sources in all industry groups and tribal, federal, and local governments, located on the identified Indian reservations.

Obligation to Respond: Mandatory.

Estimated Number of Respondents: 1,681.

Frequency of Response: Annual and on occasion.

Estimated Total Annual Hour Burden: 5,069. Burden is defined at 5 CFR 1320.03(b).

Estimated Total Annual Cost: $330,752. This includes an estimated labor cost of $330,752, and no capital investment and operation and maintenance costs.

Changes in the estimates: There is a decrease of 1,176 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of a number of changes. It reflects adjustments to the burden estimates for this collection using consultation input, historical data, and experience with implementing the FARR. Some components of the burden estimates increased and some components decreased. In most cases, the burden estimates decreased based on input from the source consultations. For some provisions the estimates of the number of respondents decreased. Some estimates changed based on additional information EPA has gained through implementing the rules.

Spencer W. Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–18467 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0351; FRL–9914–76–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal)'' (EPA ICR No. 1947.06, OMB Control No. 2060–0471) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 35023) on June 11, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 4, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–

HQ–OECA–2013–0351, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR Part 63, Subpart A, and any changes, or additions to the Provisions specified at 40 CFR Part 63, Subpart GGGG. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Owners or operators of vegetable oil production facilities.

Respondent's obligation to respond: Mandatory (40 CFR Part 63, Subpart GGGG).

Estimated number of respondents: 89 (total).

Frequency of response: Initially, occasionally, and annually.

Total estimated burden: 34,721 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,339,890 (per year), includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the respondent and Agency labor hours in this ICR compared to the previous ICR. This is not due to any program changes. The decrease in hours occurred because the number of respondents was revised from 101 to 89 based on a comment received during industry consultation. However, there is an increase in the respondent and Agency burden costs due to an adjustment in labor rates. The labor rates have been updated to reflect the most recent data from the Bureau of Labor Statistics and OPM.

Spencer W. Clark,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–18453 Filed 8–4–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Rock Bancshares, Inc., Little Rock, Arkansas; to engage *de novo,* through its subsidiary, Rock Services Company, LLC, Little Rock, Arkansas, in management consulting and counseling, employee benefit consulting and career counseling, and data processing services, pursuant to sections 225.28(b)(9)(i)(A); (b)(9)(i)(A)(1); (b)(9)(i)(A)(2); (b)(9)(i)(C); (b)(9)(ii); (b)(9)(iii)(A); (b)(9)(iii)(B); (b)(9)(iii)(C); (b)(14)(i), and (b)(14)(ii).

Board of Governors of the Federal Reserve System, July 31, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–18472 Filed 8–4–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Assistance Program Estimates: CMA—ORR–1.

OMB No.: 0970–0030.

Description: The ORR–1, Cash and Medical Assistance (CMA) Program Estimates, is the application for grants under the CMA program. The application is required by the Office of Refugee Resettlement (ORR) program regulations at 45 CFR 400.11(b). The regulation specifies that States must submit, as their application for this program, estimates of the projected costs they anticipate incurring in providing cash and medical assistance for eligible recipients and the costs of administering the program. Under the CMA program, States are reimbursed for the costs of providing these services and benefits for eight months after an eligible recipient arrives in this country. The eligible recipients for these services and benefits are refugees, Amerasians, Cuban and Haitian Entrants, asylees, Afghans and Iraqi with Special Immigrant Visas, and victims of a severe form of trafficking. States that provide services for unaccompanied refugee minors also provide an estimate for the cost of these services for the year for which they are applying for a grants.

Respondents: Respondents are the 45 States and the District of Columbia that

participate in the Refugee Resettlement program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–1, Cash and Medical Assistance Program Estimates	46	1	0.60	27.60

Estimated Total Annual Burden Hours: 27.60.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–18468 Filed 8–4–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Senior Legal Helplines Operating Within Model Approaches to Statewide Legal Assistance Systems Demonstrations

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on proposed information collection requirements relating to Senior Legal Helplines (SLHs) operating within Model Approaches to Statewide Legal Assistance Systems Demonstrations.

DATES: Submit written or electronic comments on the collection of information by October 6, 2014.

ADDRESSES: Submit electronic comments on the collection of information to: *Omar.Valverde@acl.gov*

Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201, attention Omar Valverde.

FOR FURTHER INFORMATION CONTACT: Omar Valverde, Aging Services Program Specialist, Administration for Community Living, Administration on Aging, Washington, DC 20201, (202) 357–3514.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing notice of the proposed collection of information set forth in this document.

With respect to the anticipated collection of information, ACL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Senior Legal Helplines (SLHs) funded by Title IV of the Older Americans, and operating as part of Model Approaches to Statewide Legal Assistance Systems (Model Approaches) demonstration

Grants play an important role within statewide legal service delivery systems and are designed to provide a limited scope of assistance on a wide range of legal issues such as consumer protection, housing, income security, healthcare financing, and elder abuse prevention. It is important to capture information that accurately illustrates the range and type of legal assistance being provided by the SLHs to older persons in the most social or economic need, without being overly burdensome to providers responsible for collecting the data. The anticipate data collected

and reported by SLHs participating in ACL-funded Model Approaches projects will be comparable from one SLH to another and apply standard/uniform terminology consistently across Model Approaches projects. The consistent and uniform data will be used to illustrate the effectiveness of Model Approaches states in reaching key target populations under the OAA with much needed ''priority'' legal assistance through SLHs. The data collected will also inform and drive ongoing ACL policy related to increasing the number of states that have a SLH as a sustained, and permanent feature of integrated and cost effective legal service delivery systems targeted to those most in need. Anticipated data collection and reporting requirements would apply to SLHs operating as lead partners in 2014 Model Approaches Phase I and Phase II, with a total of 11 SLHs operational during the 3 year project period.

ACL estimates the burden of this collection of information as follows: 11 SLHs would be asked to respond annually pursuant to data collection tools that should require an average burden of 2.5 hours per SLH per year or a total 27.5 hours for all complying SLHs operating under Model Approaches projects. The proposed data collection tools may be found on the CERA Web site for review at: *http://www.legalhotlines.org/uploads/1/6/9/1/16912868/reportingguidelinesforseniorlegalhelplines.pdf.*

Dated: July 31, 2014.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2014–18463 Filed 8–4–14; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1161]

Design Considerations for Devices Intended for Home Use; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Design Considerations for Devices Intended for Home Use.'' This document is intended to assist manufacturers in designing and developing home use medical devices that comply with applicable standards of safety and effectiveness and other regulatory requirements. Devices used in the home or other non-clinical environments are associated with unique risks created by the interactions among the user (often a layperson), the use environment, and the device. This document identifies several factors that manufacturers should consider, especially during device design and development, and provides recommendations for minimizing these unique risks.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Design Considerations for Devices Intended for Home Use'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Alternatively, you may submit written requests for single copies of the guidance to the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to the office that you are ordering from to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *For information concerning the guidance as it relates to devices regulated by CDRH:* Mary Brady, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5426, Silver Spring, MD 20993–0002, 301–796–6089.

For information concerning the guidance as it relates to devices regulated by CBER: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

For a variety of reasons, use of devices outside professional healthcare facilities is on the rise. First, the U.S. population is aging, and the elderly are more likely to live with chronic diseases that require daily medical care at home. Second, due to medical advancements, many individuals with chronic diseases are living longer but are dependent on home medical care. Finally, an increasing focus on reducing healthcare costs for patients of all ages has spurred the growth of the home health care market. Integral to the home health care market are home use devices. Although home use devices provide significant benefits to patients and families, including quality of life improvements and cost savings, they are also associated with unique risks. Minimizing the risks posed by home use devices can greatly improve the public health.

This guidance provides recommendations for designing and developing medical devices intended for home use through considerations involving the physical environment, the user, the device or system, the labeling, and human factors. This should result in a safe and easier-to-use device, minimize use error, and reduce the likelihood that adverse events will occur. The recommendations in the guidance apply to both prescription and over-the-counter medical devices that are intended for use in the home or other non-clinical environments.

In the **Federal Register** of December 13, 2012 (77 FR 74195), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by March 13, 2013. FDA reviewed the comments and revised the guidance as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on design considerations for devices intended for home use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Design Considerations for Devices Intended for Home Use'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1750 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in Form FDA 3500A have been approved under OMB control number 0910–0291.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 31, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18470 Filed 8–4–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1165]

Draft Guidance for Industry on Reference Product Exclusivity for Biological Products Filed Under Section 351(a) of the Public Health Service Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Reference Product Exclusivity for Biological Products Filed Under Section 351(a) of the PHS Act.'' This draft guidance is intended to assist sponsors developing biological products, sponsors holding biologics license applications (BLAs), and other interested parties in providing information and data that will help the Agency determine the date of first licensure for a reference product under 351(k)(7)(C) of the Public Health Service Act (PHS Act), as added by the Biologics Price Competition and Innovation Act of 2009 (BPCI Act). The BPCI Act amends the PHS Act and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 6, 2014. Submit either electronic or written comments concerning the proposed collection of information by October 6, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Reference Product Exclusivity for Biological Products Filed Under Section 351(a) of the PHS Act.'' This draft guidance is intended to assist sponsors who are developing biological products, sponsors of BLAs, and other interested parties in providing information that will help the Agency determine the date of first licensure for a reference product under 351(k)(7)(C) of the Public Health Service Act (PHS Act) as added by the Biologics Price Competition and Innovation Act of 2009 (BPCI Act).

The BPCI Act amends the PHS Act and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product (see sections 7001 through 7003 of the Patient Protection and Affordable Care Act (Pub. L. 111–148)). Section 351(k)(7) of the PHS Act, entitled ''Exclusivity for Reference Product,'' describes reference product exclusivity, the period of time in which a 351(k) sponsor is not permitted to submit and FDA is not permitted to license a 351(k) application that references a reference product, the single biological product licensed under section 351(a) of the PHS Act against which a biological product is evaluated in a 351(k) application. Under this section, exclusivity for the reference product is described in terms

of a prohibition on acceptance or approval of an application for a biosimilar or interchangeable product for a period of time starting from the date of first licensure. Specifically, approval of a 351(k) application may not be made effective until 12 years after the date of first licensure of the reference product which under the statute excludes the date of licensure of supplements and certain other applications. A 351(k) application for a biosimilar or interchangeable biological product cannot be submitted for review until 4 years after the date on which the reference product was first licensed under section 351(a) of the PHS Act.

Determining the date of first licensure for a reference product, in turn, determines whether a particular biological product qualifies for a period of exclusivity under 351(k)(7) of the PHS Act and the date on which such exclusivity, if any, will expire. Making this determination can present unique challenges given the requirements of section 351(k)(7) of the PHS Act. These are made more acute because of the scientific and technical complexities that may be associated with the larger and typically more complex structures of biological products as compared with small molecule drugs, as well as the processes by which such biological products are made. Therefore, the 351(a) applicant may provide information to FDA, such as that described in this guidance or other relevant information, to assist FDA with its analysis of the date of first licensure for a biological product under section 351(k)(7) of the PHS Act.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on determining the date of first licensure for biological products filed under section 351(a) of the PHS Act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 314.50 and 21 CFR part 601 (BLA) have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively. The general licensing provisions under section 351(k) (biosimilar applications) of the BPCI Act have been approved under OMB control number 0910–0719.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Reference Product Exclusivity for Biological Products Filed Under Section 351(a) of the PHS Act.

Description of Respondents: Respondents to the proposed collection of information include sponsors developing biological products and sponsors holding BLAs.

Burden Estimate: The draft guidance proposes a new collection of information by requesting information and data from sponsors to assist FDA in determining the date of first licensure for a reference product filed under section 351(a) of the PHS Act described under section 351(k)(7) of the PHS Act as added by the BPCI Act. The proposed collection of information includes information that would describe and explain how a proposed product is structurally the same as or different from any previously licensed biological product, along with supporting information that describes how such modification results in a change in safety, purity, or potency of the product. FDA recommends that the sponsor include information as described in the draft guidance at the time the 351(a) application is submitted or, in the case of a previously approved 351(a) application, as a supplement to the application. Alternatively, this information may be submitted as an amendment to the 351(a) application. A summary of the recommended information includes the following: (1) A list of all licensed biological products that are structurally related to the biological product that is the subject of the 351(a) application being considered; (2) of those licensed biological products identified in item 1, the identification of the products for which the sponsor or one of the sponsor's affiliates, including any licensors, predecessors in interest, successors in interest, or related entities, are the current or previous license holder; (3) description of the structural differences between the proposed product and any products identified in item 2; and (4) description of the change in safety, purity, and/or potency between the proposed product and any products identified in item 2. The proposed collection of information also includes any other information and data that would assist FDA in making a determination of the date of first licensure for biological products and BLAs as described under section 351(k)(7) of the PHS Act. FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Information for Determination of the Date of First Licensure	10	1	10	150	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As indicated in table 1 of this document, FDA estimates that it will receive a total of approximately 10 requests annually for determination of the date of first licensure of a 351(a) product under 351(k)(7) of the PHS Act. The average burden per response (hours) is based on FDA experience with similar information collection requirements.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov.*

Dated: July 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–18169 Filed 8–4–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Aging Lung Disease.

Date: September 4, 2014.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: ISIS S. MIKHAIL, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *MIKHAILI@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: July 30, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18420 Filed 8–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Host Genome and Oral Microbiome.

Date: August 12, 2014.

Time: 4:00 p.m. to 5:00 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: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

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: July 30, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18419 Filed 8–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Research and Education on Aging and Technology.

Date: September 2, 2014.

Time: 3:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: July 30, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–18418 Filed 8–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0240]

Change-1 to the Marine Safety Manual, Volume III

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Change-1 to the Marine Safety Manual (MSM), Volume III, Marine Industry Personnel, and the corresponding Commandant Change Notice that highlights the changes made to that manual. MSM Volume III provides information and interpretations on international conventions and U.S. statutory and regulatory issues relating to marine industry personnel. Change-1 is presented in a new format to facilitate future revisions by creating three distinct parts; Part A: Mariner Credentialing (Chapters 1–17), Part B: Vessel Manning (legacy Chapters 20–26, now Chapters 1–7), and Part C: Shipment and Service (legacy Chapters 18–19, now Chapters 1–2). The Commandant Change Notice discusses the substantive changes to Part B, Chapters 1 through 7. This Change includes revisions to Part C, Chapters 1 and 2, to account for revised regulations, updated forms, and reformatting. Part A will be reviewed and revised as part of a separate initiative.

DATES: Unless specifically stated otherwise, Change-1 to Marine Safety Manual, Volume III, Marine Industry Personnel, COMDTINST M16000.8B is effective as of August 5, 2014. Documents discussed in this notice should be available in the online docket within three business days of today's publication. This change has been incorporated into the electronic copy of the manual available on the Internet at *http://www.uscg.mil/directives/listing_cim.asp?id=16000-16999.* There will be no hardcopy distribution of this change.

ADDRESSES: To view the documents mentioned in this notice, go to *http://www.regulations.gov* and use ''USCG–2013–0240'' as your search term. Locate this notice in the search results, and use the filters on the left side of the page to locate specific documents by type. If you do not have access to the Internet, you may view the docket online by visiting 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Lieutenant Corydon Heard, Office of Commercial Vessel Compliance (CG–CVC), U.S. Coast Guard; telephone 202–372–1208, email *Corydon.F.Heard@uscg.mil.* For information about viewing material in the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Marine Safety Manual, Volume III, Marine Industry Personnel, COMDTINST M16000.8B, provides information and interpretations on international conventions and U.S. statutory and regulatory issues relating to marine industry personnel. The last revisions were released on May 27, 1999. The primary reasons for these changes are to incorporate the 2010 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention), update the provisions for vessel manning, revise the discussion on the impact of multiple international standards, to clarify the applicability of tonnage measurement systems to U.S. flag vessels, and to include changes resulting from the consolidation of merchant mariner qualification credentials. The Coast Guard published two notices in the **Federal Register** announcing the availability of the changes to Part B (legacy chapters 20–26) and requested public comments (See 78 FR 48696 and 79 FR 14714) as well as input from the Merchant Marine Personnel Advisory Committee.

Specifically, the substantive changes announced in the initial notice (August 9, 2013) included: (1) Updated provisions for vessel manning, including guidance for the issuing of safe manning documents; (2) clarified roles, responsibilities, and facilitation of communications with the appropriate offices at Coast Guard Headquarters in alignment with current Coast Guard organization; and (3) revised discussion on the impact of multiple international standards, including the Officer's Competency Certificates Convention (OCCC) 1936, the International Convention for Safety of Life at Sea (SOLAS), the Global Maritime Distress and Safety System (GMDSS), and the Principles of Minimum Safe Manning (IMO Resolution A.1047(27)). Additionally, the initial draft clarified the applicability of tonnage measurement systems to U.S. flag vessels, and included changes resulting from the consolidation of merchant mariner qualification credentials, including the removal of references to the operated uninspected towing vessel endorsement.

The primary reasons for the supplemental notice (March 17, 2014) were to announce the incorporation of the 2010 amendments to the STCW Convention and to address the 15 public comments received from the initial solicitation as well as input from the Merchant Marine Personnel Advisory Committee.

We received 12 public comment responses to the March 17, 2014 supplemental **Federal Register** notice. These comment responses contained a total of approximately 29 specific recommendations, suggestions, and other comments. We have created a comment matrix that provides a summary of each comment and the corresponding Coast Guard response, as well as internal Coast Guard comments. A copy of this comment matrix is available for viewing in the public docket for this notice. For more detailed information, please consult the actual public comment letters, which are available in the docket. You may access the docket going to *http://www.regulations.gov,* using ''USCG–2013–0240'' as your search term, and following the instructions in the **ADDRESSES** section above.

The basic ideas and principles encompassed in the initial and supplemental drafts remain. Some commenters raised concerns and objections over several proposed revisions to the MSM. In response to these comments, the Coast Guard has made some additional revisions. The Coast Guard notes, however, that the MSM (and any revisions made to the MSM) reflect current law and regulation and are intended to provide guidance and information to marine industry personnel. A brief discussion of the comments is included below. For a more in-depth discussion of the

individual comments submitted, please visit the docket for this notice to view submitted comments and the public comment matrix.

(1) The Coast Guard received several comments concerning revised language to the towing vessel work site exclusion provision. These comments generally objected to the use of the terms ''emergency'' and ''intermittent'' in the revised guidance and stated that use of these terms with regard to dredging operations was not intended by Congress when it provided guidance on work site exclusions. The Coast Guard agrees with these comments that dredging operations were specifically enumerated by Congress for this exclusion without further qualification. The use of the terms ''emergency'' and ''intermittent'' were meant to apply to towing operations not involving dredging operations seeking a work site exclusion and we stated so in the supplemental draft of Part B, Chapter 7.

(2) Multiple commenters expressed concern over the licensing requirements for uninspected fish processing vessels between 200 GT and less than 1600 GT (which entered into service prior to 1988). Specifically, commenters were concerned that Part B, Chapter 7 overturns a 20-year-old policy interpretation and compliance actions by the Coast Guard which allowed those fish processing vessels to operate without a licensed assistant engineer. The text in Part B, Chapter 7 is largely unchanged since the last revision of MSM III in 1999. However, the special ''note'' in Part B, Chapter 7 incorporates and makes specific reference to the December 2013 CG Message ''Engineer Officer Endorsements on Uninspected Fishing Vessels'' (R 061640Z DEC 13) and CG–543 Policy Letter 11–11 for relaxed enforcement measures on Uninspected Commercial Fishing Vessels until January 1, 2015—unless specified otherwise.

(3) An additional commenter noted that the passage and implementation of Public Law 98–89 necessitated the revision of the regulations to refer to ''operation'' of a vessel rather than ''navigation'' of a vessel. The regulations were revised to refer to ''operation,'' however, the Coast guard has failed to provide adequate guidance, particularly with respect to the minimum complement of officers and crew necessary for the safe operation of vessels when they are not in navigation. The Coast Guard acknowledges this comment and appreciates the commenter's concerns. As explained in the legislative history of Public Law 98–89, Congress intended the words ''operate on'' or ''on'' to replace the term ''navigate'' and it was intended ''to cover all operations of a vessel when it is at the pier, idle in the water, at anchor, or being propelled through the water.'' 1983 U.S. Code Cong. and Adm. News, p. 924, 933. However, because of the number and degree of varying operational scenarios it is difficult to develop standardized scales for every manning permutation. For vessels not carrying passengers—including those not underway—it is the responsibility of the master to establish adequate watches (46 CFR 15.705(a)). To clarify this, revisions have been incorporated into Part B, Chapter 5.

Additional changes include: (1) General revisions to Part C, Chapters 1 and 2 (legacy Chapters 18 and 19) to account for revised regulations, updated forms and reformatting; (2) Added Common COI/SMD Sample Endorsements to the Annex; and (3) Included a Forward at the beginning as an opener. These additional changes were not considered to be substantial, but were necessary to reflect revised regulations and current practice.

It should be noted that Change-1 is not intended to preempt or take the place of separate policy initiatives regarding specific decisions on appeal or future regulations. Future changes to the MSM may be released if the Coast Guard promulgates new regulations or appeal decisions, which may affect the guidance and information contained within the MSM.

If you discover a discrepancy between the manning or endorsements specified by the Certificate of Inspection/Safe Manning Documentation (COI/SMD) and the provisions of the MSM, Volume III, bring it to the attention of the OCMI with a view toward aligning with the revised MSM III.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: July 30, 2014.

Paul F. Thomas,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2014–18528 Filed 8–4–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2014–N092; FXRS12610600000–145–FF06R06000]

National Bison Range Complex, Moiese, MT; Environmental Assessment for the Proposed Annual Funding Agreement With the Confederated Salish and Kootenai Tribes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that our draft environmental assessment (EA) for the proposed Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) is available. The proposed AFA would allow CSKT to design, manage, and implement the biology, visitor services, fire, and maintenance program on the National Bison Range Complex. This draft EA describes and analyzes four alternatives, including the draft AFA and the No Action alternative.

DATES: To ensure consideration, we must receive your written comments on the draft EA by September 4, 2014. Submit comments by one of the methods under **ADDRESSES**.

ADDRESSES: Send your comments or requests for more information by one of the following methods.

Email: bisonrange@fws.gov. Include ''NBR AFA'' in the subject line.

U.S. Mail: Laura King, Planning Division, National Bison Range Complex, 58355 Bison Range Road, Moiese, MT 59824.

Document Request: A copy of the EA may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, CO 80228; or by download from *http://fws.gov/bisonrange.*

FOR FURTHER INFORMATION CONTACT: Laura King, by phone at 406–644–2211, ext. 210, or by email at *laura_king@fws.gov;* or Toni Griffin, by phone at 303–236–4378, or by email at *toni_griffin@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The National Bison Range Complex (refuge complex) is managed by the U.S. Fish and Wildlife Service as part of the National Wildlife Refuge System (Refuge System). The refuge complex is located in Flathead, Lake, and Sanders

Counties in northwestern Montana, with the refuge headquarters in Moiese, Montana. The refuge complex consists of the following units of the Refuge System: The National Bison Range, Pablo National Wildlife Refuge (Pablo Refuge), Ninepipe National Wildlife Refuge (Ninepipe Refuge), Lost Trail National Wildlife Refuge, and the Northwest Montana Wetland Management District (WMD). The units included in the proposed AFA are the National Bison Range, the Ninepipe and Pablo Refuges, and nine waterfowl production areas in the Lake County portion of the WMD. All of these units are in Lake and Sanders Counties, and within the boundaries of the Confederated Salish and Kootenai Tribes' (CSKT's) Flathead Indian Reservation.

The National Bison Range was established in 1908, to conserve the herd of bison presented by the American Bison Society. It also has a purpose as a refuge and breeding ground for birds. In addition, Pablo and Ninepipe Refuges were established as refuge and breeding areas for native birds. The United States owns all the lands within the refuge complex except for Ninepipe and Pablo Refuges, which are on tribal trust lands owned by CSKT. In 1948, the Service acquired a refuge easement from CSKT for the right to manage these lands and waters as part of the Refuge System. Including the nine waterfowl production areas in the WMD, the area being considered under the proposed action encompasses 26,604 acres made up of a variety of wildlife habitats from wetlands, lakes, and streams, to intermountain bunchgrass prairies interspersed with forested lands. The refuge complex supports a variety of wildlife species, including the plains bison, bighorn sheep, black bears, and migratory Federal trust species, including grassland birds and shorebirds that are becoming imperiled as habitats decline across their ranges. Over 205 species of birds use these lands for breeding, migration, and nesting.

The beauty of the Mission Valley and the refuge complex brings over 200,000 annual visitors from all over the world to view and photograph wildlife. Visitors come to explore the visitor center, drive the 19-mile-long Red Sleep Auto Tour Route, fish and hunt, and participate in refuge complex education and interpretation programs.

The CSKT is a Federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior (Secretary) under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450–450n, as amended by section 204 of the Tribal Self-Governance Act of 1994, codified at 25 U.S.C. 458aa–458hh. The CSKT is comprised of the Bitterroot Salish, the Pend d'Oreille, and the Kootenai Tribes, whose home is the 1.3-million-acre Flathead Indian Reservation in northwestern Montana. The Tribal Self-Governance Act gives qualifying tribes the authority to request and enter into negotiations for AFAs with non-BIA Department of the Interior agencies, authorizing the tribe to conduct programs, services, functions, or activities that have a special geographical, historical, or cultural significance to the tribe. We have the authority to decline a proposal made by any tribe, and we may not transfer any positions or duties that are considered inherently Federal.

Background

In November 2011, CSKT requested negotiations for a third AFA with the Service that would allow them to manage and implement the biology, fire, maintenance, and visitor services programs on the National Bison Range Complex. Negotiations for a draft AFA were concluded in March 2012. In May 2012, the Service initiated an EA process to evaluate the environmental consequences of this draft AFA. The public was notified about the EA process through statewide media outlets and the refuge complex Web site. As part of this public scoping process, the public reviewed the draft AFA and provided comments. We prepared this EA to document our analysis of alternatives. Implementation of any of the alternatives would involve changes to the staff and administration of the National Bison Range Complex, so we developed a range of alternatives, with different levels of program management by the CSKT and various staff configurations. In this EA, we describe in detail the following alternatives and their expected consequences:

- Alternative A—No Action
- Alternative B—Draft AFA (Proposed Action)
- Alternative C—AFA for Fire and Visitor Programs
- Alternative D—AFA same as Alternative C, plus Addition of More CSKT Staff in All Programs
- Alternative E—AFA same as Alternative D, plus District Programs With Combined Service and CSKT Staff in All Programs

AFA Alternatives We Are Considering

Alternative A—Current Management (No Action)

In accordance with approved Service plans and policies and under the supervision and leadership of the refuge manager, our employees would plan, design, and conduct all work on the refuge complex, augmented as needed by contractors, volunteers, and cooperators such as universities and researchers. We would keep the nine current permanent positions and convert the two term positions (fish and wildlife biologist and maintenance worker) back to permanent status. Our program leaders in the biology, visitor services, and maintenance programs would continue to recruit and supervise or lead the respective staff in their programs. A GS–9 outdoor recreation planner may be utilized to help develop programs and projects and to manage the visitor center for the 200,000 visitors that come to the refuge complex each year, bringing the staff to 12 permanent employees. We would continue targeted recruiting of CSKT members and descendants for seasonal positions, vacated permanent positions, and the Federal Pathways Programs for students, which would give individuals the experience and opportunity to qualify for careers with us or other agencies.

We would continue to coordinate with CSKT as the entity responsible for wildlife management throughout the surrounding Flathead Indian Reservation and as the owner of the lands on which the Ninepipe and Pablo Refuges are situated and other adjoining tribal lands. Our informal and formal cooperation with CSKT would continue on issues such as invasive plant species control, fire management, trumpeter swan restoration, habitat management and native plant restoration, and grizzly bear and gray wolf management on the reservation.

Under the leadership of our supervisory wildlife biologist, we would continue to plan, design, and manage all biological programs to support and accomplish the purposes for which each unit of the refuge complex was established. We would continue to set annual priorities, designing and monitoring short- and long-term projects to better understand the resources of the refuge complex and address management concerns. Inventory and monitoring programs would continue to focus on Federal trust species and the biological resources that support those species. The biological staff would develop or update our long-range management plans such as the 15-year Comprehensive Conservation Plan and

the habitat management plan. We would develop these documents with the full involvement of various partners CSKT and the State of Montana.

The quality of the forage, including the spread of invasive plant species and the effects of other grazing animals and insects, would continue to be monitored and managed on the Bison Range to improve range health for bison forage while providing a diversity of habitats for other native wildlife. We would continue to inventory and monitor infestations of invasive plant species and develop and apply treatment strategies, using an integrated approach of chemical, biological, cultural, and mechanical methods. We would continue to coordinate with CSKT and other partners in Lake and Sanders Counties, to develop a treatment strategy that identifies priorities, new invaders, and treatment areas that would have a greater effect on a larger landscape.

We would coordinate water level management on the Ninepipe and Pablo Refuges and waterfowl production areas with CSKT and the Flathead Irrigation District. We would use water level management structures to optimize nesting, feeding, and brood-rearing habitat for waterfowl and other waterbirds.

Bird surveys, including surveys of waterfowl, neotropical migrants, and resident birds, would continue to be designed and carried out by our staff or coordinated with other agencies such as the CSKT Division of Fish, Wildlife, Recreation, and Conservation (FWRC). We would conduct annual big game counts, per recommendations in the Bison Range's Fenced Animal Management Plan.

We would continue to monitor bison health and genetic integrity in coordination with the Service's Wildlife Health Office (WHO). We would monitor the health of our bison herd, including conducting necropsies to prevent the spread of disease. Our maintenance and biological staff would plan and conduct the annual bison roundup to collect genetic information and monitor herd health.

Under the leadership of our supervisory outdoor recreation planner, we would continue to plan and execute all visitor services programs, which would focus on the mission of the Service, refuge management programs, cultural importance of the refuge complex, and our Federal trust species such as bison and migratory birds, other resident wildlife, and their native habitat needs. We would continue to provide hunting and fishing opportunities on specific units within the refuge complex, following Federal, State, and reservation laws. We would continue to develop and provide environmental education and interpretive programs to local schools and conduct outreach through local media and online resources to educate the public about the refuge complex, the Service, and the Refuge System. Our supervisory outdoor recreation planner would be responsible for developing long-range management plans, including the 15-year Comprehensive Conservation Plan and the Visitor Services Plan for the refuge complex.

Under the direction of our lead maintenance employee, we would continue to be responsible for all projects and programs associated with the maintenance program, including the maintenance and repair of all facilities, roads, equipment, and vehicles, to provide dependable, safe, and secure operating conditions for all programs. Our maintenance staff would continue to assist with habitat management projects, such as invasive species control, haying and grazing programs, habitat restoration, and water level management. Our maintenance staff would also continue to be responsible for the movement of bison for grazing management and the annual roundup activities necessary for monitoring herd health and excessing animals. Using horses, our maintenance staff would relocate bison every 2 to 3 weeks (April through September) to manage refuge habitats and provide optimal grazing opportunities. They would also continue to lead the operations needed to move bison through the corral system during the annual roundup, upgrading and maintaining this system as needed. The two highest graded maintenance employees would continue to train other employees, including management and biology staff, on how to safely assist with these operations.

Alternative B—Proposed Action

We would execute and carry out the draft AFA negotiated with CSKT during 2011–2012 (appendix A). CSKT would be responsible for designing, implementing, and managing the biology, fire, maintenance, and visitor services programs, as described in alternative A, in accordance with approved Service plans and policies. Three of the 11 current Service employees—refuge manager, deputy refuge manager, and law enforcement officer—would remain employed by us. Remaining staff would be assigned or transferred to CSKT. Five permanent employees—a GS–12 supervisory wildlife biologist, GS–9 range conservationist, WG–9 equipment operator, WG–8 maintenance worker, and GS–7 range (fire) technician—would be asked to sign Intergovernmental Personnel Act (IPA) agreements assigning them to work for CSKT. IPA assignments are voluntary, and must be agreed to by our employees. The GS–11 supervisory outdoor recreation planner position would remain with the Service until that employee transfers or retires. At that time, the position and funding would be given to CSKT for recruitment of its own employee. Two 4-year term positions—a WG–7 maintenance worker and a GS–9 fish and wildlife biologist—would not be renewed. These positions would be converted to permanent positions and their salaries and duties would be transferred to CSKT for recruitment. Providing CSKT with these 8 permanent positions would allow CSKT to manage and implement refuge programs, including supervising all program leaders and support staff and recruiting and supervising volunteers.

We would provide funding to CSKT for recruitment of two to six seasonal employees to support all refuge complex programs and a GS–11 (equivalent) wildlife refuge specialist. The wildlife refuge specialist would be supervised by the manager of the CSKT FWRC, but would receive day-to-day direction from either our refuge manager or deputy refuge manager. The wildlife refuge specialist would supervise all CSKT and IPA Service staff, directing the day-to-day work of employees and volunteers in the biology, fire, maintenance, and visitor services programs. In the absence of the CSKT wildlife refuge specialist, a CSKT-designated official would fulfill these duties.

A refuge complex leadership team would be formed to develop annual work plans, set work priorities, address performance and conduct issues, prepare periodic status reports, and resolve disputes. The leadership team would include our refuge manager and deputy refuge manager, the CSKT wildlife refuge specialist, and the manager of the CSKT FWRC. The team would meet as needed to discuss management plans and address issues.

Alternative C

We would negotiate an AFA with CSKT authorizing it to conduct the fire management program and collaborate on all aspects of the visitor services program. All work of the refuge complex, as described in alternative A, would be accomplished under the supervision and leadership of our refuge manager or deputy refuge manager and our program leaders in accordance with approved Service plans and policies.

The Service would retain all current Federal positions and convert the two term positions—fish and wildlife biologist and maintenance worker—back to permanent status.

CSKT Fire Management Division staff would implement the fire management program. The Division (under the Tribes' Forestry Department) is responsible for wildland fire management, including fire preparedness, wildfire suppression, and application of prescribed fire on the Flathead Indian Reservation. We would provide funding to CSKT to recruit a GS–9 (equivalent) outdoor recreation planner and up to four seasonal CSKT employees to implement the visitor services program, including operating the visitor center and greeting and orienting visitors. The CSKT outdoor recreation planner would supervise these seasonal CSKT employees and work alongside our supervisory outdoor recreation planner. They would collaborate on interpretive and education programs and on providing visitors with information on the resources, management, history, and cultural significance of the refuge complex.

Alternative D

In addition to the fire operations and visitor services programs as described in alternative C, CSKT would receive funding to recruit up to three more seasonal employees (in addition to the four seasonal visitor services staff). These added CSKT employees would support the biology and maintenance programs. Our Service leaders would train and lead all CSKT staff in all programs. The long-term objective would be to transfer more of the permanent positions to CSKT over time, through attrition and negotiation.

All work of the refuge complex, as described in alternative A, would be accomplished under the supervision and leadership of our refuge manager or deputy refuge manager and our program leaders, in accordance with approved Service plans and policies. The approach would be to provide the opportunity and time needed for the new CSKT employees to gain the experience and knowledge necessary to fully perform the activities of permanent positions. In addition to the refuge manager, deputy refuge manager, and law enforcement officer, the Service would retain the program leader or highest graded positions in the biology, maintenance, and visitor services program. We would also retain the second highest graded maintenance worker. These seven positions could continue refuge programs and train new employees, including new CSKT staff, regardless the status of an AFA. The current term positions (fish and wildlife biologist and maintenance worker) would be converted to permanent. Four positions could transfer to CSKT (after being vacated through transfer, retirement, or resignation) including a GS–9 (equivalent) fish and wildlife biologist, GS–9 (equivalent) range conservationist, GS–7 (equivalent) range technician, and WG–7 (equivalent) maintenance worker. As these permanent positions were vacated, our refuge manager would renegotiate with CSKT to decide whether or not to transfer them to CSKT. Our employees would work closely with CSKT seasonal staff to provide the training and experience needed to support the operations and programs of the refuge complex and to help them compete for permanent positions with us or with CSKT.

Alternative E

In addition to transferring fire and visitor services operations to CSKT, as described in alternatives C and D, this AFA would add more CSKT staff positions, expanding our management capabilities on the refuge complex. CSKT-recruited staff would be involved in all operations on the refuge complex, particularly on the Ninepipe and Pablo Refuges and on the nine waterfowl production areas in the WMD. All work of the refuge complex, as described in alternative A, would be accomplished under the supervision and leadership of our refuge manager or deputy refuge manager and our program leaders, in accordance with approved Service plans and policies. Under this AFA, we would provide funding to the CSKT to recruit two new employees to help with the management of the WMD, including a GS–11 (equivalent) wildlife refuge specialist and a WG–6 (equivalent) maintenance worker. The manager of the CSKT FWRC would supervise these employees.

CSKT would also be provided funding to recruit three additional permanent employees that would support complex-wide programs, including a WG–6 (equivalent) maintenance worker, GS–5 (equivalent) biological science technician, a GS–9 (equivalent) range conservationist, and an average of two to six temporary employees (depending on annual project funding) in the biology, visitor services, and maintenance programs. Our refuge manager and program leaders would be involved in the recruitment and selection of all CSKT staff, working collaboratively with both agencies' personnel or human resources offices. Initially, we would keep nine employees, working closely with the CSKT staff to provide the training and experience needed to support the operations and programs of the refuge complex and safely manage our bison herd. Through negotiation after transfer, retirement, or resignation of our in-place employees, we may transfer up to three more positions to the CSKT, including a GS–9 (equivalent) fish and wildlife biologist, WG–7 (equivalent) maintenance worker, and GS–7 (equivalent) range technician.

Next Steps

After the public provides comments on the draft EA, we will present this document, along with a summary of all substantive public comments, to the Regional Director. The Regional Director will consider the environmental effects of each alternative, along with information gathered during public review, and will select a preferred alternative. If the Regional Director finds that no significant impacts would occur, the Regional Director's decision will be disclosed in a Finding of No Significant Impact. If the Regional Director finds a significant impact would occur, an environmental impact statement will be prepared. If approved, the action in the preferred alternative will become the proposed AFA between the Service and CSKT. This proposed AFA will be sent to Congress for a 90-day review prior to being signed and implemented.

Public Availability of Comments

All public comment information provided voluntarily by mail or by phone (e.g., names, addresses, comments) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

Authority

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500 through1508, 43 CFR part 46); other appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Administration Act of 1966, as amended; and Service policies and procedures for compliance with those laws and regulations.

Dated: June 6, 2014.

Matt Hogan,

Acting, Regional Director, Mountain-Prairie Region, U. S. Fish and Wildlife Service.

[FR Doc. 2014–18450 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK4004200/A0R5C4040.9999.00/134A2100DD]

Proclaiming Certain Lands as Reservation for the Stillaguamish Tribe of Indians of Washington

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 63.96 acres, more or less, as the Stillaguamish Indian Reservation.

FOR FURTHER INFORMATION CONTACT: Robin A. White, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW., MS–4642–MIB, Washington, DC 20240, telephone (202) 208–1110.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467) for the lands described below. The land was proclaimed to be the Stillaguamish Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Stillaguamish Indian Reservation

Snohomish County, Washington

130–T1143

The South Half of the Northeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M., Record of Snohomish County, Washington.

Situate in Snohomish County, State of Washington.

Containing 20 acres, more or less.

130–T1201

Lot 1 of Snohomish County Short Plat No. PFN96–102231SP recorded under Auditor's file number 9701215001, being a portion of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M.

Situate in the County of Snohomish, State of Washington.

Containing 2.30 acres, more or less.

130–T1202

Lot 2 of Snohomish County Short Plat No. PFN96–102231SP recorded under Auditor's file number 9701215001, being a portion of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M.

Situate in the County of Snohomish, State of Washington.

Containing 7.52 acres, more or less.

130–T1209

Lot 1 of Leishman Acreage Tracts, according to plat recorded in Volume 34 of plats at page 81, in Snohomish County, Washington;

Except the South 2.73 feet thereof.

Situate in the County of Snohomish, State of Washington.

Containing 3.60 acres, more or less.

130–T1210

The South Half of the South Half of the North Half of the Northeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M. Except the East 30 feet as conveyed to Snohomish County for road purposes, deeds recorded under Auditor's File Number 213314 and 668384, records of Snohomish County, Washington.

(Also known as Lot 4, Snohomish County Short Plat No. SP42 (3–83), recorded under Auditor's File Number 8304220210, records of Snohomish County, Washington)

Situate in the County of Snohomish, State of Washington.

Containing 4.89 acres, more or less.

130–T1224

Parcel A:

The South 2.73 feet of Lot 1, Leishman Acreage Tracts, according to the plat thereof, recorded in Volume 23, of Plats, Page 81, Records of Snohomish County, Washington.

Parcel B:

Lot 2, Leishman Acreage Tracts, according to the plat thereof, recorded In Volume 23, of Plats, Page 81, Records of Snohomish County, Washington.

Parcel C:

The East 280 Feet of the South Half of the South Half of the South Half of the North Half of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M.;

Except the East 30 Feet thereof as conveyed to Snohomish County for road purposes, Deeds recorded under Auditor's File Number 213314 and 668384, Records of Snohomish County, Washington.

Parcel D:

The South Half of the South Half of the South Half of the North Half of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M.;

Except the East 280 Feet Thereof.

Parcel E:

The North Half of the South Half of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M.;

Except the East 30 Feet thereof as conveyed to Snohomish County for road purposes, Deeds recorded under Auditor's File Number 213314 and 668384, Records of Snohomish County, Washington.

(Also Known as Parcel 2 of Boundary Line Adjustment recorded under Auditor's File Number 200210030055, Records of Snohomish County, Washington).

Parcel F:

The South Half of the South Half of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East, W.M.;

Except the East 30 Feet thereof as conveyed to Snohomish County for road purposes, Deeds recorded under Auditor's File Number 213314 and 668384, Records of Snohomish County, Washington.

(Also Known as Parcel 1 of Boundary Line Adjustment recorded under Auditor's File Number 200210030055, Records of Snohomish County, Washington).

Parcel G:

The North Half of the North Half of the South Half of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East W.M.

Except the East 30 Feet thereof conveyed to Snohomish County under Auditor's File Nos. 213314 and 668384 for road purposes.

Parcel H:

Lot 1 of Short Plat Number Sp 352 (11–83), recorded under Recording Number 8604150304, being a re-record of Recording Number 8603280222, being a Portion of the Southeast Quarter of the Southeast Quarter of Section 32, Township 32 North, Range 5 East W.M., in Snohomish County Washington.

All Situate in the County of Snohomish, State of Washington.

Containing 18.34 acres, more or less.

130–T1229

Parcel A:

The North Half of the East Half of Government Lot 1, Section 5, Township 31 North, Range 5 East, W.M.

Except the East 330 feet thereof;

And Except the North 30 feet thereof conveyed to Snohomish County under Auditor's File No. 442482 and 655266.

Parcel B:

The North 348.62 feet of the East 330 feet of the North Half of the East Half of Government Lot 1, Section 5, Township 31 North, Range 5 East, W.M., in Snohomish County Washington;

Except the North 30 feet thereof conveyed to Snohomish County under Auditor's File No. 442482 and 655266,

And Except the East 22 feet thereof;

Together with an easement for ingress and egress over under and across the East 30 feet of said North Half of the East Half of Government Lot 1 as recorded under Auditor's File Number 7706220049;

Except the North 30 feet as conveyed to Snohomish County;

And Except that portion lying within the above described main tract.

(Also known as Lot 1 of Snohomish County Short Plat No. ZA8812575, recorded under Auditor's File Number 9005010294)

Situate in the County of Snohomish, State of Washington.

Containing 7.31 acres, more or less.

The above-described lands contain a total of 63.96 acres, more or less, which is subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: July 30, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–18480 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14930–K, F–14930–M; LLAK940000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to NANA Regional Corporation, Inc., Successor in Interest to Akuliak Incorporated. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.).* The subsurface estate in these lands will be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed to NANA Regional Corporation, Inc., as Successor in Interest to Akuliak Incorporated. Akuliak Incorporated was the original ANCSA corporation for the village of Selawik, but merged with the NANA Regional Corporation, Inc. in 1976 under the authority of PL 94–204. The lands are in the vicinity of Selawik, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 16 N., R. 6 W.,
Sec. 13.
Containing approximately 80 acres.

T. 16 N., R. 8 W.,
Secs. 21 and 28.
Containing 710.90 acres.
Aggregating approximately 791 acres.

Notice of the decision will also be published once a week for four consecutive weeks in the *Arctic Sounder.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 4, 2014 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Joe J. Labay,

Land Transfer Resolution Specialist, Division of Lands and Cadastral.

[FR Doc. 2014–18457 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000 L14200000.BJ0000 14X]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will file the plats 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: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fourth Principal Meridian, Minnesota

T. 49 N., R. 17 W.

The plat of survey represents the dependent and corrective dependent resurvey of a portion of the subdivisional lines, the dependent resurvey of a portion of the east boundary of the Fond Du Lac Indian reservation, the survey of the subdivision of sections 10 and 15, and an informational traverse of the present day meanders of the right bank of the St. Louis River of Township 49 North, Range 17 West, in the State of Minnesota, and was accepted June 18, 2014.

Fifth Principal Meridian, Minnesota

T. 135 N., R. 41 W.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of Section 15 of Township 135 North, Range 41 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted June 24, 2014.

Choctaw Meridian, Mississippi

T. 7 N., R. 10 E.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines, the survey of the subdivision of sections 10 and 15, and the survey of lands held in trust for the Mississippi Band of Choctaw Indians; Township 7 North, Range 10 East, of the Choctaw Meridian, in the State of Mississippi, and was accepted June 24, 2014.

Fourth Principal Meridian, Wisconsin

T. 34 N., R. 15 E.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 28 of Township 34 North, Range 15 East, Fourth Principal Meridian, in the State of Wisconsin, and was accepted June 24, 2014.

We will place a copy of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against the surveys, 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 plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: July 30, 2014.

John Sroufe,

Chief Cadastral Surveyor, Acting.

[FR Doc. 2014–18455 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–15941; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Extension and Continuation of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes extension or continuation of visitor services for the contracts listed below until the dates shown under the terms and conditions of the current contract as amended. The extension of operations does not affect any rights with respect to selection for award of a new concession contract.

DATES: Effective July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Jo Pendry, Acting Chief, Commercial Services Program, National Park Service, 1201 Eye Street NW., 11th Floor, Washington, DC 20005, Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 51.23, the National Park Service has determined the proposed extensions are necessary to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

CONCID	Concessioner	Park unit	Extend until
COLO002–04	Lisburne Lane Antiques, Inc	Colonial National Historical Park	December 31, 2014.
CUIS001–04	Lang Seafood Company	Cumberland Island National Seashore	December 31, 2014.
GRTE024–03	Jackson Hole Mountain Resort	Grand Teton National Park	May 31, 2015.
GRTE032–03	The Hole Hiking Experience, Inc	Grand Teton National Park	May 31, 2015.
OLYM008–05	ARAMARK Sports and Entertainment Services, Inc	Olympic National Park	December 31, 2015.
ORCA001–03	Illinois Valley Community Response Team	Oregon Caves National Monument	December 31, 2015.
DENA001–03	Doyon/ARAMARK Joint Venture	Denali National Park & Preserve	December 31, 2015.
DENA005–04	Rainier Mountaineering, Inc	Denali National Park & Preserve	December 31, 2015.
DENA006–04	Mountain Trip International, LLC	Denali National Park & Preserve	December 31, 2015.
DENA008–04	Alaska Mountaineering School, LLC	Denali National Park & Preserve	December 31, 2015.
DENA009–04	Alpine Ascents International, Inc	Denali National Park & Preserve	December 31, 2015.
DENA010–04	American Alpine Institute, Ltd	Denali National Park & Preserve	December 31, 2015.
DENA011–04	National Outdoor Leadership School	Denali National Park & Preserve	December 31, 2015.
DENA030–05	Kantishna Air Taxi, Inc	Denali National Park & Preserve	December 31, 2015.
SEKI004–98	DNC Parks and Resorts at Sequoia, Inc	Sequoia & Kings Canyon National Parks	December 31, 2015.
ANIA903–05	Joe Klutsch	Aniakchak National Monument & Preserve	December 31, 2015.
ANIA904–05	Jay M. King	Aniakchak National Monument & Preserve	December 31, 2015.
ANIA906–05	Cinder River Lodge, Inc	Aniakchak National Monument & Preserve	December 31, 2015.
GAAR001–05	Richard A. Guthrie	Gates of the Arctic National Park & Preserve	December 31, 2015.
GLBA008–05	Alaska Discovery, Inc	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA011–05	Chilkat Guides, Ltd	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA012–05	Colorado River & Trail Expeditions, Inc	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA013–05	James Henry River Journeys	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA014–05	Mountain Travel	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA017–05	Wilderness River Outfitters	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA020–05	Vernon W. Schumacher	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA029–05	Janice Lowenstein	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA033–05	Gary Gray	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA901–05	Gary Gray	Glacier Bay National Park & Preserve	December 31, 2015.
GLBA902–05	Gary Gray	Glacier Bay National Park & Preserve	December 31, 2015.
KATM002–05	No See Um Lodge, Inc	Katmai National Park & Preserve	December 31, 2015.
KATM003–05	Alaska's Enchanted Lake Lodge, Inc	Katmai National Park & Preserve	December 31, 2015.
KATM004–05	Shaska Ventures, Inc	Katmai National Park & Preserve	December 31, 2015.
KATM005–05	Hartley, Inc	Katmai National Park & Preserve	December 31, 2015.
KATM006–05	Chris Branham	Katmai National Park & Preserve	December 31, 2015.
KATM007–05	Katmai Air, LLC	Katmai National Park & Preserve	December 31, 2015.
LACL002–05	Alaska's River Wild Lodge, LLC	Lake Chelan National Recreation Area	December 31, 2015.
LACL901–05	Arno Krumm	Lake Chelan National Recreation Area	December 31, 2015.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of this concession contract and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services until the date shown under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

CONCID	Concessioner	Park unit	Continue services until
YOSE004–93	DNC Parks and Resorts at Yosemite, Inc.	Yosemite National Park	February 28, 2016.

Dated: July 7, 2014.

Lena McDowall,

Associate Director, Business Services.

[FR Doc. 2014–18496 Filed 8–4–14; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR06230000, 14XR0680A1, RN076949980000501]

Notice To Extend the Public Comment Period for the Northwest Area Water Supply Project Draft Supplemental Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation is announcing a 30-day extension of the public comment period for the Northwest Area Water Supply Project Draft Supplemental Environmental Impact Statement (Draft SEIS). The originally announced comment period ends on August 11, 2014, but has been extended through September 10, 2014. The original notice of availability of the Draft SEIS and the public hearings was published in the **Federal Register** on June 27, 2014 (79 FR 36556).

DATES: Comments on the Draft SEIS should be postmarked by September 10, 2014.

ADDRESSES: Send written comments to Ms. Alicia Waters, Project Manager, Bureau of Reclamation, P.O. Box 1017, Bismarck, ND 58502; or via email to *awaters@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Waters, Project Manager, (701) 221–1206; or by email at *awaters@usbr.gov.*

SUPPLEMENTARY INFORMATION:

Public Disclosure Statement

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: July 30, 2014.

John F. Soucy,

Deputy Regional Director, Great Plains Region.

[FR Doc. 2014–18466 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–MN–P

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 1029–0047

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 renewed approval for the collection of information for the permanent program performance standards—surface mining activities and underground mining activities.

DATES: Comments on the proposed information collection must be received by October 6, 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 203—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 part 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 renewed approval. This collection is contained in 30 CFR parts 816 and 817—Permanent Program Performance Standards—Surface and Underground Mining Activities. OSMRE will request a 3-year term of approval for this 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 parts 816 and 817 is 1029–0047. Responses are required to obtain a benefit for this collection.

OSMRE has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents and costs.

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 OSMRE'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 Parts 816 and 817—Permanent Program Performance Standards—Surface and Underground Mining Activities.

OMB Control Number: 1029–0047.

Summary: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority to monitor and inspect surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: Once, on occasion, quarterly and annually.

Description of Respondents: Coal mining operators and State regulatory authorities.

Total Annual Responses: 361,266.

Total Annual Burden Hours: 1,813,063.

Total Annual Burden Cost: $9,506,784.

Dated: July 30, 2014.

Harry J. Payne,

Chief, Division of Regulatory Support.

[FR Doc. 2014–18520 Filed 8–4–14; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1021 (Second Review)]

Malleable Iron Pipe Fittings From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on malleable iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on March 3, 2014 (79 FR 11819), and determined on June 6, 2014 that it would conduct an expedited review (79 FR 34550, June 17, 2014).

The Commission completed and filed its determination in this review on August 4, 2014. The views of the Commission are contained in USITC Publication 4484 (August 2014), entitled *Malleable Iron Pipe Fittings from China: Investigation No. 731–TA–1021 (Second Review).*

By order of the Commission.

Issued: July 31, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–18474 Filed 8–4–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1117–0007]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Information Collection Under Review Registrants Inventory of Drugs Surrendered

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 79 FR 29802, May 23, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until September 4, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Imelda Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152.

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503 or sent to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Registrants Inventory of Drugs Surrendered—DEA Form 41.

(3) *The agency form number:* 1117–0007.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions, Federal, State, local or tribal government.

Abstract: Title 21 CFR 1307.21 states that any registrant desiring to dispose of any controlled substance may request assistance from the DEA by listing the controlled substance on DEA Form 41 and submitting the form to DEA. DEA Form 41 is used to account for destroyed controlled substances, and its use is mandatory.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 87,736 respondents will respond annually to this collection. The DEA estimates that it takes 30 minutes to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 43,868 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: July 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–18407 Filed 8–4–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0001]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Information Collection Under Review; Report of Theft or Loss of Controlled Substances

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 79 FR 29800–29801, May 23, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until September 4, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Imelda Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Report of Theft or Loss of Controlled Substances—DEA Form 106.

(3) *The agency form number:* 1117–0001.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit, Federal, State, local or tribal government.

Abstract: Title 21 CFR, 1301.74(c) & 1301.76(b) require DEA registrants to notify the DEA, in writing, of any theft or significant loss of any controlled substance within one business day of discovery, and to complete and submit to DEA the DEA Form 106 regarding the theft or loss. This provides accurate accountability and allows DEA to monitor substances diverted for illicit purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 9,655 registrants submit 25,430 forms (24,189 electronic/1,241 paper) annually for this collection, taking .33 hours (20 minutes) to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,392 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: July 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–18436 Filed 8–4–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0009]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Controlled Substances Import/Export Declaration

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 79 FR 29801–29802, May 23, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until September 4, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Imelda Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—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.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Controlled Substances Import/Export Declaration—DEA Form 236.

3. *The agency form number:* 1117–0009.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Federal, State, local or tribal government.

Abstract: DEA Form 236 provides the DEA with oversight and control over the importation and exportation of controlled substances. 21 CFR part 1312, promulgated pursuant to 21 U.S.C. 952 and 21 U.S.C. 953, requires registrants who desire to import non-narcotic substances in Schedules III, IV, and V or to export non-narcotic substances in Schedules III and IV and any other substance in Schedule V to furnish a controlled substances import declaration/controlled substances export invoice on a DEA Form 236.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are 342 respondents, 5,064 (4,717 paper/347 electronic) annual responses, and that each response takes 18 minutes (paper) and 15 minutes (electronic) to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* 2,282.6 annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: July 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–18439 Filed 8–4–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Survey of Juveniles Charged in Adult Criminal Court, 2014

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 14, page 3628, on January 22, 2014, allowing a 60-day comment period. The reference data for this collection has changed from 2013 to 2014.

DATES: Comments are encouraged and will be accepted for 30 days until September 4, 2014.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: New data collection, Survey of Juveniles Charged in Adult Criminal Court (SJCACC) 2014.

(2) The title of the form/collection: Survey of Juveniles Charged in Adult Criminal Court or SJCACC, 2014.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: The form labels are SJCACC—2014, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: State Courts. Abstract: The SJCACC (SJCACC) project will collect accurate and reliable case processing statistics for youth under 18 charged as adults in a nationally representative sample. It will obtain data on demographics of the juvenile, charge information, and method of arrival in adult court (jurisdictional age laws vs. through a transfer mechanism). Adjudication outcomes such as dismissal, guilty plea, and outcome at trial will also be collected, as will sentencing data for those convicted. Fingerprint IDs will be obtained to allow for future recidivism studies and linking with criminal history data. When available, state-wide data will be collected, allowing for some state-by-state comparisons. Juveniles who were transferred to adult court will be oversampled, thus allowing for analyses of the use of different transfer methods. Please see Cost to Federal Government for the financial responsibility associated with the issuance of this report.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that information will be collected on a total of 12,000 felony and misdemeanor defendants from a nationally representative sample that includes states and counties. The estimated burden hours will be contingent upon the state and counties electronic storage and transfer

capabilities, with data collection occurring in a more timely and expeditious manner among respondents with the capacities to electronically transfer all their case processing information to the data collection agent. It is estimated 13 states will provide unformatted electronic data files and it should take an average of 62 hours per state. For those 12 states that provide a non-uniform extract, it should take an average of 43 hours, and those 3 states providing a uniform extract will spend on average 82 hours. For the remainder of the nation in which electronic data is not readily available, a sample will be drawn. Eighteen PSUs will be chosen, with approximately 10 responding counties in each PSU. It is estimated that 12 PSUs will have 18 counties with electronic data systems, with an average burden of 14 hours. It is estimated that six PSUs will have nine counties requiring sampling for paper or electronic surveys. An estimated 40 surveys will be required for each of these counties, with an average burden of two hours per survey. It is estimated that 22 states will provide summary statistics of their data, which will be used for weighting and validity checks.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated public burden associated for the SJCACC data collection is a total of 2,571 hours for all of the responding states and counties.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Avenue, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: July 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–18410 Filed 8–4–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0149]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2014 National Survey of Prosecutors (NSP–14)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 79, Number 52, pages 15140–15141 on March 18, 2014, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received no requests for a copy of the proposed information collection instrument and instructions. No inquiries or others comments were received.

DATES: Comments are encouraged and will be accepted for 30 days until September 4, 2014.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of the National Survey of Prosecutors, with changes, a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2014 National Survey of Prosecutors (census).

(3) *Agency form number:* Forms: The form number is NSP–14. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs. Prosecution and Adjudication Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* This information collection is a census of the local prosecutor offices that handles criminal cases in State courts. The Bureau of Justice Statistics (BJS) proposes to implement the next iteration of the National Survey of Prosecutors (NSP–14). Local prosecutors occupy a central role in a criminal justice system seeking to ensure justice is served. Prosecutors represents the local government in deciding who is charged with a crime, the type and number of charges filed, whether or not to offer a plea, and providing sentencing recommendations for those convicted of crimes. Since 1990, the NSP has been the only recurring national statistical program that captures the administrative and operational characteristics of the prosecutorial function in the State criminal justice system. The NSP–14 will gather national statistics on local prosecutor office staffing and services, budgets, caseloads and convictions, use of DNA evidence, and disposition reporting to repositories. In addition, this study will collect data on the prevalence of human trafficking, cyber-crimes, identity theft, participation in specialty courts and diversion programs, prosecution of youths in criminal courts and criminal jurisdiction services provided on tribal lands by local prosecutor offices. These data will allow BJS to conduct trend analyses and comparisons with historical data, where available and provide descriptive statistics on emerging crimes. The information gathered in the NSP–14 will cover 2014.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond:* An estimated 2,330 persecutor offices will take part in the 2014 National Survey of Prosecutors. Based on pilot testing, an average of 60 minutes per respondent was needed to complete form NSP–14. To ensure a high response rate, BJS subsequently reduced the overall number of questions on the NSP–14 by half. The revised estimated burden for respondents to complete the NSP–14 is 30 minutes. The following factors were considered when creating the burden estimate: The estimated total number of prosecutor offices, the ability of offices to access or

gather the data, and the case management systems capabilities generally found within a local prosecutor office. BJS estimates that nearly all of the approximately 2330 respondents will fully complete the questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 1,282 hours. It is estimated that respondents will take 30 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 1,165 hours (2330 respondents' × .5 hours = 1,165 hours) and an additional 10% or 117 hours will be needed for data validation and follow-up contact with the respondents for nonresponse, incorrect or missing information.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Avenue, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: July 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–18409 Filed 8–4–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the Army Unemployment Compensation for Ex-Servicemembers Claimants Initiative

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed ICR can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 6, 2014.

ADDRESSES: You may submit comments by either one of the following methods: *Email: javar.janet.o@dol.gov; Mail or Courier:* Janet Javar, Chief Evaluation Office, U.S. Department of Labor, Room S–2218, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Contact Janet Javar by telephone at 202–693–5954 (this is not a toll-free number) or by email at *javar.janet.o@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: The Army Unemployment Compensation for Ex-Service Members (UCX) Claimants' Initiative, funded by the U.S. Department of Labor, Employment and Training Administration (ETA), provides grants to four states to improve strategies for providing reemployment services to Army UCX claimants and for leveraging assets and sharing data across partners. The major goals of the initiative are to create a strong collaborative partnership among the Unemployment Insurance (UI) system, the public workforce system, and the three components of the Army (active, National Guard, and Reserve) that will support the rapid reemployment of UCX claimants; improve the sharing of UCX data that will lead to improved outreach and better understanding of UCX claimants and their service delivery needs; and increase outreach, exposure to jobs, and reemployment strategies for UCX claimants that fully leverage existing resources with new and innovative service delivery strategies. The period of performance for the grants is from July 1, 2012, to June 30, 2015. The purpose of the evaluation, funded by the Chief Evaluation Office, is to determine the extent to which the initiative's goals were achieved by each of the four grantee states.

This package requests clearance for semi-structured discussions that will take place during a single round of two-day visits to each of the sites in the winter of 2014–2015. The site visits will involve an array of individuals that varies by state based on the projects that each state has decided to implement. Conversations will take place with grantee leaders, staff of an American Job Center, and representatives of the UI system in each state. Other discussants will include a suitable combination of representatives of the Army and UCX claimants in the initiative. The site visit will facilitate an assessment of the progress of these efforts, information gathering, and potential for the delivery of additional in-person technical assistance.

II. Desired Focus of Comments: Currently, the Department of Labor is soliciting comments concerning the above data collection for Evaluation of the Army UCX Claimants Initiative. Comments are requested to:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the information collection 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 submissions of responses.

III. Current Actions: At this time, the Department of Labor is requesting clearance for site visit data collection for the Evaluation of the Army Unemployment Compensation for Ex-Servicemembers (UCX) Claimants Initiative.

Type of review: New information collection request.

OMB Control Number: 1205–0NEW.

Affected Public: Staff associated with implementing the Army UCX Claimants Initiative in four states.

Frequency: Once.

Total Responses: 40.

Average Time per Response: 45 minutes.

Estimated Total Burden Hours: 30 hours.

Total Burden Cost: $0.

Affected Public: UCX Claimants in four states.

Frequency: Once.

Total Responses: 16.

Average Time per Response: 90 minutes.

Estimated Total Burden Hours: 24 hours.

Total Burden Cost: $0.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval; they will also become a matter of public record.

James H. Moore, Jr.,

Deputy Assistant Secretary for Policy, U.S. Department of Labor.

[FR Doc. 2014–18429 Filed 8–4–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting Notice

SUMMARY: Notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy. Date, Time, Place: September 4, 2014; 10:00 a.m. to 11:30 a.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave. NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f)(2)(A), it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Therefore, the meeting is exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents). 5 U.S.C. app. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Anne M. Zollner, Chief, Trade Policy and Negotiations Division; Phone: (202) 693–4890.

Signed at Washington, DC, the 30th day of July, 2014.

Carol Pier,

Deputy Undersecretary, International Affairs.

[FR Doc. 2014–18428 Filed 8–4–14; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before September 4, 2014.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2014–022–C.

Petitioner: Mountain Coal Company, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434.

Mine: West Elk Mine, MSHA I.D. No. 05–03672, located in Gunnison County, Colorado.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests that a previously granted petition for modification, Docket No. M–1999–113–C, be amended. The petitioner proposes to add two additional road Getman graders, model RDG–1504 serial number 7004, and model RDG–1504C serial number 6718. The maximum speed on the Getman graders will be limited to 10 miles per hour or less by blocking out gear ratios that would provide higher speeds. Grader operators will be trained to recognize appropriate levels of speed for different road conditions and slopes. Grader operators will be trained to lower the moldboard (grader blade) to provide additional stopping capability in emergencies.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the additional graders under the existing terms and conditions of the petition for modification will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2014–023–C.

Petitioner: ACI Tygart Valley, 1200 Tygart Drive, Grafton, West Virginia 26354.

Mine: Leer Mine, MSHA I.D. No. 46–09192, located in Taylor County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment in or inby the last open crosscut. The petitioner states that:

(1) Nonpermissible electronic testing and diagnostic equipment to be used includes: Laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; signal analyzer devices; ultrasonic measuring devices; electronic component testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by MSHA's district office. Permissible approved voltage measuring instruments are available and will be used when possible.

(2) All other testing and diagnostic equipment used in or inby the last open crosscut will be permissible.

(3) All nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment used in or inby the last open crosscut will be examined by a qualified person prior to use to ensure the equipment is being maintained in a safe operating condition. These examination results will be recorded and retained for one year and will be made available to MSHA on request.

(4) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment in or inby the last open crosscut.

(5) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected while the nonpermissible electronic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(6) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(7) Except for time necessary to troubleshoot under actual mining conditions, coal production in the section will cease. However, coal may remain in or on the equipment to test and diagnose the equipment under load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to miners.

(8) Nonpermissible electronic testing and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(9) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.

(10) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

(11) Any piece of equipment subject to this petition will be inspected by MSHA prior to initially placing it in service underground.

(12) Cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2014–024–C.

Petitioner: ACI Tygart Valley, 1200 Tygart Drive, Grafton, West Virginia 26354.

Mine: Leer Mine, MSHA I.D. No. 46–09192, located in Taylor County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment in return airways. The petitioner states that:

(1) Nonpermissible electronic testing and diagnostic equipment to be used includes: Laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; signal analyzer devices; ultrasonic measuring devices; electronic component testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by MSHA's district office. Permissible approved voltage measuring instruments are available and will be used when possible.

(2) All other testing and diagnostic equipment used in return airways will be permissible.

(3) All nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic used in return airways will be examined by a qualified person prior to use to ensure the equipment is being maintained in a safe operating condition. These examination results will be recorded and retained for one year and will be made available to MSHA on request.

(4) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment in return airways.

(5) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected while the nonpermissible electronic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment will be withdrawn out of return airways.

(6) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(7) Except for time necessary to troubleshoot under actual mining conditions, coal production in the section will cease. However, coal may remain in or on the equipment to test and diagnose the equipment under load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400

will be removed before testing begins to provide additional safety to miners.

(8) Nonpermissible electronic testing and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(9) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.

(10) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

(11) Any piece of equipment subject to this petition will be inspected by MSHA prior to initially placing it in service underground.

(12) Cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method in this will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2014–025–C.

Petitioner: ACI Tygart Valley, 1200 Tygart Drive, Grafton, West Virginia 26354.

Mine: Leer Mine, MSHA I.D. No. 46–09192, located in Taylor County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to allow the use of nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings. The petitioner states that:

(1) Nonpermissible electronic testing and diagnostic equipment to be used includes: Laptop computers; oscilloscopes; vibration analysis machines; cable fault detectors; point temperature probes; infrared temperature devices; signal analyzer devices; ultrasonic measuring devices; electronic component testers; and electronic tachometers. Other testing and diagnostic equipment may be used if approved in advance by MSHA's district office. Permissible approved voltage measuring instruments are available and will be used when possible.

(2) All other testing and diagnostic equipment used within 150 feet of pillar workings or longwall faces will be permissible.

(3) All nonpermissible low-voltage or battery-powered nonpermissible electronic testing and diagnostic equipment used within 150 feet of pillar workings will be examined by a qualified person prior to use to ensure the equipment is being maintained in a safe operating condition. These examination results will be recorded and retained for one year and will be made available to MSHA on request.

(4) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible electronic testing and diagnostic equipment within 150 feet of pillar workings.

(5) Nonpermissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above one percent. When methane is detected while the nonpermissible electronic equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment will be withdrawn further than 150 feet from pillar workings.

(6) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(7) Except for time necessary to troubleshoot under actual mining conditions, coal production in the section will cease. However, coal may remain in or on the equipment to test and diagnose the equipment under load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to miners.

(8) Nonpermissible electronic testing and diagnostic equipment will not be used to test equipment when float coal dust is in suspension.

(9) All electronic testing and diagnostic equipment will be used in accordance with the safe use procedures recommended by the manufacturer.

(10) Qualified personnel who use electronic testing and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with use of the equipment.

(11) Any piece of equipment subject to this petition will be inspected by MSHA prior to initially placing it in service underground.

(12) Cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable. Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2014–006–M.

Petitioner: Martin Marietta Kansas City, LLC, 1099 18th Street, Suite 2150, Denver, Colorado 80202.

Mine: Randolph Deep Mine, MSHA I.D. No. 23–02308, located in Reynolds County, Missouri.

Regulation Affected: 30 CFR 57.11052(d) (Refuge areas).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of compressed air or oxygen in canisters, cylinders, or bottles in lieu of compressed air lines and the use of sealed bottled water supply in lieu of waterlines in the Randolph Deep Mine. The petitioner states that:

(1) The Randolph Mine is an underground limestone mine. The active workings are accessed from the surface via twin declines, located adjacent to one another and each 6750 feet long.

(2) On the current mining level, there is no surface access that would make it feasible for air or waterlines from the surface to reach the current mine workings.

(3) Compressed air is not in use underground except for small air compressors in the maintenance facilities.

(4) Potable water is currently supplied via bottled water to the underground workings. Due to the length of air and waterline required from the mine portals (i.e., 6750 feet) and the potential of damage to either or both lines during an emergency, the required method would not provide adequate protection for the miners.

The petitioner proposes to:

(a) Use a refuge chamber made of steel. The refuge chamber has inside dimensions of 8 feet wide x 19.5 feet long x 7.75 feet high for a total of 1209

cubic feet of space or 156 square feet of floor space. This refuge chamber will be located on the mining level within a 30-minute walking distance from the working face. The refuge chamber will be equipped for a maximum of 20 miners. This capacity exceeds the normal work crew on any given day.

(b) Use compressed air to the following specifications:

(i) Only grade D breathing air will be supplied;

(ii) A supply of no less than 2880 liters of compressed air per day per person for a minimum of 4 days will be provided;

(iii) Cylinders will be stored in a safe manner and in compliance with MSHA standards 30 CFR 57.16005 and 57.16006, away from flammable and combustible materials;

(iv) A regulator system for regulating the flow of compressed air at a rate of 2 liters per minute per person will be provided with the refuge chamber supplies, and an extra regulator will be kept within the refuge chamber;

(v) Equipment designed for monitoring the oxygen and carbon dioxide level of the ambient air in the refuge chamber will be provided with the refuge chamber supplies;

(vi) The condition and pressure of the cylinders will be inspected on a monthly basis;

(vii) Tools and any repair parts recommended by the manufacturer for the compressed air system will be kept within the refuge chamber; and

(viii) A ball valve air vent will be installed in the wall of the refuge chamber to relieve pressure buildup from the use of the compressed air inside the chamber.

(c) In the alternative, the refuge chamber will be equipped with a compressed oxygen supply to the following specifications:

(i) Only medical or airline quality (United States Pharmacopeia) oxygen will be supplied in refuge chambers;

(ii) A supply of no less than 550 liters of oxygen per day per person for a minimum of 4 days will be provided;

(iii) Oxygen cylinders will be stored in a safe manner, in compliance with MSHA standards 30 CFR 57.16005 and 57.16006, away from flammable and combustible materials;

(iv) An oxygen regulator for regulating the flow of oxygen and monitoring the reserve available will be provided with the refuge chamber supplies, and an extra oxygen regulator will be kept within the refuge chamber;

(v) Equipment designed for monitoring the oxygen and carbon dioxide level of the ambient air in the refuge chamber will be provided with the refuge chamber supplies. Oxygen levels will not exceed 23 percent inside the refuge chamber;

(vi) The condition and pressure of the cylinders will be inspected on a monthly basis;

(vii) Tools and any repair parts recommended by the manufacturer for the compressed oxygen system will be kept within the refuge chamber;

(viii) An electric-powered CO_2 scrubbing system will be included within the refuge chamber which will be provided with a 96 hour battery backup in the event of lost power. Sufficient CO_2 scrubbing cartridges will be provided for 20 miners for up to 96 hours to maintain a carbon dioxide level below 1 percent; and

(ix) A ball valve air vent will be installed in the wall of the refuge chamber to relieve pressure buildup from the use of the compressed air inside the chamber.

(d) The oxygen supply and carbon dioxide will be monitored via a hand-held mine gas meter and kept in the refuge chamber with battery backup to ensure availability of use when required. The refuge chamber will be provided with a hand-held mine gas meter for air monitoring and also have a battery-powered mine telephone.

(e) Commercially purchased water will be supplied in sealed individual portion-sized bottles in the refuge chamber. There will be a supply of 2.5 quarts of water per day per person for four days, for a total of 50 gallons minimum, with a shelf life of two years. The condition and quantity of the water will be confirmed by inspection on a monthly basis. Written instructions for conservation of water will be provided with the refuge chamber supplies.

(f) A minimum of 2000 calories of food per person per day sufficient for 20 miners for 96 hours will be included within the refuge chamber.

(g) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(h) The refuge chamber will be inspected monthly and documented by the mine Manager or designee.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the existing standard.

Dated: July 31, 2014.

Sheila McConnell,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 2014–18427 Filed 8–4–14; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–046]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 4, 2014. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records

Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Army and Air Force Exchange Service (DAA–0334–2014–0001, 1 item, 1 temporary item). Records related to duties paid on imported goods.
2. Department of Defense, Army and Air Force Exchange Service (DAA–0334–2014–0002, 2 items, 2 temporary items). Records related to accidents involving agency employees and property.
3. Department of Defense, Army and Air Force Exchange Service (DAA–0334–2014–0003, 2 items, 2 temporary items). Records related to consolidated safety reports.
4. Department of Health and Human Services, Office of the Inspector General (DAA–0468–2013–0013, 2 items, 2 temporary items). Records include investigative case files related to alleged fraud, abuse, and irregularities or violations of laws, and regulations and allegations not resulting in a formal case file.
5. Department of Homeland Security, Transportation Security Administration (N1–560–12–3, 6 items, 6 temporary items). Records related to internal investigations and inspections, including reports and investigative case files.
6. Department of Homeland Security, Transportation Security Administration (DAA–0560–2013–0008, 1 item, 1 temporary item). Master files of an electronic information system used to collect and analyze customer service feedback.
7. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2013–0002, 1 item, 1 temporary item). Master files of an electronic information system used to facilitate background checks related to weapons licenses, permits, or registrations.
8. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2013–0003, 1 item, 1 temporary item). Master files of an electronic information system used to facilitate background checks for firearms purchasing.
9. Department of Labor, Occupational Safety and Health Administration (N1–100–09–1, 27 items, 25 temporary items). Master files of electronic information systems of agency directorates of administrative programs, cooperative and state programs, technical support and emergency management, evaluation and analysis, and construction. Proposed for permanent retention are master files of electronic information systems related to accident investigations and industrial health sampling.
10. Department of State, Bureau of Conflict and Stabilization Operations (DAA–0059–2014–0018, 3 items, 3 temporary items). Records of the Office of Program Strategies and Design including standard operating procedures and manuals, copies of grant files, and funding files.
11. Department of the Treasury, Bureau of the Public Debt (N1–53–03–1, 4 items, 4 temporary items). Records related to the processing of savings bonds or government securities.
12. Library of Congress, Agency-wide (DAA–0297–2014–0009, 7 items, 7 temporary items). Records relating to Web site management.
13. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (N1–431–08–15, 15 items, 8 temporary items). Records related to performance issues and operating experience at nuclear power plants. Proposed for permanent retention are master files of electronic information systems and related publications regarding licensee performance and plant events.
14. Railroad Retirement Board, Agency-wide (DAA–0184–2013–0002, 21 items, 21 temporary items). Records related to the administration of human resources.
15. Railroad Retirement Board, Agency-wide (DAA–0184–2013–0004, 13 items, 13 temporary items). Records related to the administration of information resources.

Dated: July 29, 2014.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2014–18498 Filed 8–4–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate

proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/*. This information may also be requested by telephoning Crystal Robinson at 703/292–8687.

Dated: July 31, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–18448 Filed 8–4–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0180]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from July 10, 2014 to July 23, 2014.

DATES: Comments must be filed by September 4, 2014. A request for a hearing must be filed by October 6, 2014.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0180 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0180.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0180 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System

requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Kewaunee (DEK), Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of amendment request: January 16, 2014. A publicly-available version is in ADAMS under Accession No. ML14029A076.

Description of amendment request: The proposed amendment would modify the KPS renewed facility operating license by revising the emergency plan and the associated emergency action level (EAL) scheme consistent with the KPS permanent shutdown and defueled status. On February 25, 2013, DEK submitted a certification of permanent cessation of power operations pursuant to 10 CFR, Part 50, Section 50.82(a)(1)(i), stating that DEK had decided to permanently cease power operation of KPS on May 7, 2013. With the docketing of subsequent certification for permanent removal of fuel from the reactor vessel pursuant to 10 CFR 50.82(a)(1)(ii) on May 14, 2013, the 10 CFR Part 50 license for KPS no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2). The proposed changes to the emergency plan and EAL scheme are being submitted to the U.S. Nuclear Regulatory Commission (NRC) for approval prior to implementation, as required under 10 CFR 50.54(q)(4) and 10 CFR Part 50, Appendix E, Section IV.B.2.

DEK states that the proposed emergency plan changes do not meet all the standards of 10 CFR 50.47(b) and requirements of 10 CFR Part 50, Appendix E. By letter dated July 31,

2013 (ADAMS Accession No. ML13221A182), DEK submitted requests to the NRC for exemptions from portions of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR Part 50, Appendix E, Section IV, that the proposed emergency plan does not meet. The proposed emergency plan revision is predicated on the approval of the requested exemptions.

Basis for proposed no significant hazards consideration determination: Pursuant to 10 CFR 50.92, the NRC staff has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

KPS has permanently ceased operation and is permanently defueled. Because the 10 CFR Part 50 license for KPS no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. Analyses of the remaining credible accidents, as documented in the KPS Updated Safety Analysis Report (USAR), show that any releases beyond the site boundary would be below the Environmental Protection Agency (EPA) Protective Action Guides (PAGs) exposure levels, as detailed in the EPA's ''Protective Action Guide and Planning Guidance for Radiological Incidents,'' Draft for Interim Use and Public Comment dated March 2013.

The proposed amendment would revise the emergency plan and EAL scheme to reflect the permanently defueled status of the plant. The proposed changes discontinue offsite emergency planning requirements and reduce the scope of onsite emergency planning requirements by removing positions that are no longer credited or needed for the remaining credible design basis accidents. The revised emergency plan and EAL scheme focus on responding to the emergencies that may arise from off-normal events and conditions which could indicate a degradation of the level of safety or indicate a security threat bounded by the type and significance of the remaining credible design basis accidents in a permanently shutdown and defueled condition.

The proposed changes to the emergency plan do not impact the function of plant structures, systems, or components (SSCs). The proposed changes do not affect accident initiators or precursors, nor do they alter design assumptions. Therefore, the proposed changes to the emergency plan do not involve an increase in the probability of an accident previously evaluated.

The proposed changes to the emergency plan remove positions from the emergency plan that are no longer credited or needed for the remaining credible design basis accidents. The proposed changes do not prevent the ability of the emergency response organization to perform its intended functions to mitigate the onsite consequences of an event for the remaining credible design basis accidents. The proposed changes do not increase the types or amounts of effluent releases beyond the site boundary from the remaining credible design basis accidents.

Therefore, the proposed changes to the emergency plan do not involve a significant increase in the consequences of an accident previously evaluated.

The proposed changes to the EAL scheme limit the emergency classification levels to an Unusual Event and Alert. Because no remaining credible accidents can result in releases beyond the site boundary that exceed EPA PAG exposure levels, the need for emergency classifications of Site Area Emergency or General Emergency would not be required at a permanently shutdown and defueled facility. The changes to the EAL scheme do not involve any physical plant changes. The EALs and installed EAL equipment are not accident initiators and therefore the proposed changes to the EAL scheme do not involve an increase in the probability of an accident previously evaluated.

The proposed EAL scheme changes do not affect the capability of SSCs to mitigate a design basis accident. Thus, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would revise the emergency plan and EAL scheme to reflect the permanently defueled status of the plant. The proposed changes do not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. Also, the proposed changes do not result in a change to the way that the equipment or facility is operated so that no new accident initiators are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment would revise the emergency plan and EAL scheme to reflect the permanently defueled status of the plant. The proposed changes to the emergency plan and EAL scheme do not involve a change in the plant's design, configuration, or operation. The proposed changes do not affect the way the plant structures, systems, and components perform their safety functions or their design margins as they apply to the remaining credible accidents. The proposed changes do not involve a change to the technical specifications. Because there is no change to the physical design or operation of the plant, no change to the accident analyses, and no change to the safety analysis acceptance criteria as a result of this amendment, there is no change to any of these margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Douglas A. Broaddus.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station (ONS), Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: May 20, 2014. A publicly available version is in ADAMS under Accession No. ML14141A415.

Description of amendment request: The proposed amendment requests removal of Technical Specification requirements for ONS units that did not have the Reactor Protection System (RPS)/Engineered Safeguards Protective System (ESPS) digital upgrades or Low Pressure Service Water (LPSW) Reactor Building (RB) Waterhammer Prevention System (WPS) modifications. The Licensee stated that these Technical Specification requirements no longer pertain to ONS since the RPS/ESPS digital upgrade and the LPSW RB WPS modification have been implemented for all three ONS units. The proposed amendment also deletes a Note statement for the Emergency Condenser Circulating Water (ECCW) System Technical Specification that states the Technical Specification is not applicable until after completion of the Service Water upgrade modifications on each respective ONS unit. The licensee stated that the Service Water upgrade modifications have been implemented for each ONS unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed changes to Technical Specifications 3.3.1, 3.3.3, 3.3.5, 3.3.7, 3.3.27,

3.6.5, 3.7.7, and 3.7.8 do not modify the Reactor Protective System (RPS), Engineered Safeguards Protective System (ESPS), Low Pressure Service Water (LPSW) System, the LPSW Reactor Building (RB) Waterhammer Protection System (WPS) or the Emergency Condenser Circulating Water (ECCW) System, nor make any physical changes to the facility design, material, or construction standards. The proposed changes remove obsolete information from the Technical Specifications that no longer apply to ONS; delete Surveillance Requirements (SRs) for the RPS RB High Pressure trip function and the ESPS RB Pressure—High High actuation parameter that are not applicable; and correct a wording error in a Condition statement for TS 3.7.7 which results in a more stringent Condition. Since the removed information no longer applies to ONS, and the deleted SRs are for equipment features that do not exist for the RPS RB High Pressure trip function and the ESPS RB Pressure—High High actuation parameter, removal of the information and deletion of the SRs do not result in operation that will increase the probability of initiating an analyzed event. Likewise, the more restrictive requirement in the corrected Condition statement continues to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. The proposed Technical Specification changes do not alter assumptions relative to mitigation of an accident or transient event. The removal of the obsolete Technical Specification information, deletion of SRs for features that do not exist, and correction of the Technical Specification Condition statement have no effect on the process variables, structures, systems, and components that must be maintained consistent with the safety analyses and licensing basis. Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

Response: No.

The proposed changes to Technical Specifications 3.3.1, 3.3.3, 3.3.5, 3.3.7, 3.3.27, 3.6.5, 3.7.7, and 3.7.8 only remove obsolete information from the Technical Specifications pertaining to the RPS/ESPS digital upgrade, the LPSW RB WPS modification installation, and the ECCW System Service Water upgrade modification completion. The proposed changes also delete SRs that verify features that do not exist for the RPS RB High Pressure trip function and the ESPS RB Pressure—High High actuation parameter. Lastly, the proposed changes correct a wording error in a Condition statement for TS 3.7.7 which results in a more stringent Condition. The changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The RPS, ESPS, LPSW System, LPSW RB WPS, and ECCW System are not associated with any design accident initiation; they only mitigate accidents. However, these proposed Technical Specification changes are consistent with the assumptions in the safety analyses and licensing basis. Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed changes to Technical Specifications 3.3.1, 3.3.3, 3.3.5, 3.3.7, 3.3.27, 3.6.5, 3.7.7, and 3.7.8 remove information from the Technical Specifications pertaining to the RPS/ESPS digital upgrade, the LPSW RB WPS modification installation, and the ECCW System Service Water upgrade modification completion. The proposed changes also delete SRs that verify features that do not exist for the RPS RB High Pressure trip function and the ESPS RB Pressure—High High actuation parameter. Lastly, the proposed changes correct a wording error in a Condition statement for TS 3.7.7 which results in a more stringent Condition. The removed Technical Specification information no longer applies to ONS operation and is considered obsolete; the deleted SRs cannot be performed since the affected plant equipment will not support SR testing by design; and the corrected TS 3.7.7 Condition statement results in a more conservative Technical Specification. Removal of the Technical Specification obsolete information has no impact on the margin of safety since the equipment that the Technical Specification information applied to no longer exists at ONS. Deletion of SRs on the subject RPS/ESPS equipment has no impact on the margin of safety since the RPS/ESPS equipment, by design, will not support SR testing. Correction of the TS 3.7.7 Condition statement has no impact on the margin of safety since the correction results in a more conservative Technical Specification. The changes maintain requirements within the safety analyses and licensing basis. As such, no question of safety is involved. Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 11, 2013. A publicly-available version is in ADAMS under Accession No. ML13316C052.

Description of amendment request: Entergy Operations, Inc. (the licensee), has proposed to change the Waterford Steam Electric Station, Unit 3 Updated Final Safety Analysis Report (UFSAR). This change will clarify in the UFSAR how the pressurizer heaters function is met for natural circulation at the onset of a loss-of-offsite power concurrent with the specific single point vulnerability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would describe the specific common circuit breaker associated with the control power closing circuitry to the Switchgears 32A and 32B Supply Circuit Breakers in UFSAR 1.9.26 and 5.4.10 as contained in Attachment 2 [of the licensee's letter dated November 11, 2013] and that local manual operation outside of the Control Room would be necessary to reenergize Pressurizer Heaters during a loss of offsite power concurrent with the specific common circuit breaker being open. Plant Operators are trained and have procedural guidance including manual operator action to address Natural Circulation Cooldown with a Loss of Offsite Power. The Pressurizer Heaters are not themselves a credible initiator of any accident, and the requested amendment makes no change to the Pressurizer Heaters themselves, so the probability of an accident will not be increased. The proposed change would not change the source term nor adversely impact any mitigating systems, so the consequences of an accident will not be increased.

Therefore, the probability or consequences of any accident previously evaluated will not be increased by the proposed change.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change would describe the specific common circuit breaker associated with the control power closing circuitry to the Switchgears 32A and 32B Supply Circuit Breakers in UFSAR 1.9.26 and 5.4.10 as contained in Attachment 2 [of the licensee's letter dated November 11, 2013] and that local manual operation outside of the Control Room would be necessary to reenergize Pressurizer Heaters during a loss of offsite power concurrent with the specific common circuit breaker being open.

The proposed changes do not involve a change in the design, configuration, or method of operation of the plant that could create the possibility of a new or different

accident. Equipment will be operated in a manner for which it is currently designed. This license amendment request does not impact any plant systems that are accident initiators or adversely impact any accident mitigating systems. The Pressurizer Heaters are not themselves a credible initiator of any accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change would describe the specific common circuit breaker associated with the control power closing circuitry to the Switchgears 32A and 32B Supply Circuit Breakers in UFSAR 1.9.26 and 5.4.10 as contained in Attachment 2 [of the licensee's letter dated November 11, 2013] and that local manual operation outside of the Control Room would be necessary to reenergize Pressurizer Heaters during a loss of offsite power concurrent with the specific common circuit breaker being open. Plant Operators are trained and have procedural guidance including manual operator action to address Natural Circulation Cooldown with a Loss of Offsite Power.

This amendment does not change the manner in which safety limits or limiting safety settings are determined. Because the Pressurizer Heaters will continue to be monitored and controlled as per Technical Specification 3.4.3.1 and Technical Requirements Manual 3.4.3.1, this proposed change to the UFSAR will not present an adverse impact to plant operation or result in a significant reduction in a margin of safety.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Douglas A. Broaddus.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 9, 2013. A publicly-available version is in ADAMS under Accession No. ML13345A686.

Description of amendment request: Entergy Operations, Inc. (the licensee), has proposed to change the Waterford Steam Electric Station, Unit 3 Technical Specifications (TS). Specifically, the amendment would revise:

- TS 3.3.1, Reactor Protective Instrumentation;
- TS 3.1.3.4, Shutdown CEA [Control Element Assembly];
- TS 3.3.2, Engineered Safety Features Actuation System Instrumentation;
- TS 3.3.3.1, Radiation Monitoring Instrumentation;
- TS 3.3.3.6, Accident Monitoring Instrumentation;
- TS 3.3.3.11, Explosive Gas Monitoring Instrumentation;
- TS 4.8.2.1, D.C. [Direct Current] Sources;
- TS 6.1, Responsibility;
- TS 6.2.1, Offsite and Onsite Organizations;
- TS 6.2.2, Unit Staff; and
- TS 6.12, High Radiation Area.

These changes would improve clarity, correct administrative and typographical errors, or establish consistency with NUREG–1432, Standard Technical Specifications Combustion Engineering Plants, Revision 4.0 (NUREG–1432).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the Technical Specifications to improve clarity, correct administrative and typographical errors, and establish consistency with NUREG–1432. This includes two technical changes.

A provision to an existing surveillance test has been added that limits the total battery inter-cell resistance to maintain battery terminal voltage above the required operating voltage. A change to limit the total battery inter-cell resistance has no effect on the probability of an accident previously evaluated. The proposed change to limit the total battery inter-cell resistance does not involve a significant increase in the consequences of an accident previously evaluated. This is because the addition of this limit will ensure that the battery is demonstrated as capable to meet its safety function.

The other technical change extends the Completion Time from 1 hour to 4 hours for verifying that the departure from nucleate boiling ratio (DNBR) limit is met and disabling the Reactor Power Cutback when one or both CEACs [Control Element Assembly Calculators] are inoperable. A change to the Completion Time for Actions in response to inoperable equipment has no effect on the probability of an accident previously evaluated. The proposed change to the Completion Time for Actions in response to inoperable equipment does not involve a significant increase in the consequences of an accident previously evaluated. This is because the safety function of a CEAC is to identify and compensate for a misaligned CEA [control element assembly], and there is a low probability of occurrence during the four hour Completion Time that one or more misaligned CEAs could significantly adversely affect: Core power distribution, shutdown margin, ejected CEA worth, or initial reactivity insertion rate during a reactor trip.

Consequently, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes revise the Technical Specifications to improve clarity, correct administrative and typographical errors, and establish consistency with NUREG–1432. This includes two technical changes.

A provision to an existing surveillance test has been added that limits the total battery inter-cell resistance to maintain battery terminal voltage above the required operating voltage. A change to limit the total battery inter-cell resistance does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is because the addition of this limit will ensure that the battery is demonstrated as capable to meet its existing safety function and does not change the safety function in any manner.

The other technical change extends the Completion Time from 1 hour to 4 hours for verifying that the departure from nucleate boiling ratio (DNBR) limit is met and disabling the Reactor Power Cutback when one or both CEACs are inoperable. A change to the Completion Time for Actions in response to inoperable equipment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Consequently, the proposed changes do not create the possibility of a new or different kind of accident.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise the Technical Specifications to improve clarity, correct administrative and typographical errors, and establish consistency with NUREG–1432. This includes two technical changes.

A provision to an existing surveillance test has been added that limits the total battery inter-cell resistance to maintain battery terminal voltage above the required operating voltage. A change to limit the total battery inter-cell resistance does not involve a significant reduction in a margin of safety. This is because the addition of this limit will ensure that the battery is demonstrated as having margin to meet its safety function.

The other technical change extends the Completion Time from 1 hour to 4 hours for verifying that the departure from nucleate boiling ratio (DNBR) limit is met and disabling the Reactor Power Cutback when

one or both CEACs are inoperable. A change to the Completion Time for Actions in response to inoperable equipment does not affect protection criterion for plant equipment and does not reduce the margin of safety. This change provides Operators time to assess and perform the required activities in a controlled manner consistent with the risk associated with an inoperable CEAC function. Actions associated with this Condition involve disabling the Control Element Drive Mechanism Control System (CEDMCS), and signaling all OPERABLE CPC [core protection calculator] channels that both CEACs are failed. This applies a large penalty factor associated with two CEAC failures within CPC calculations. The penalty factor for two failed CEACs is sufficiently large that power must be maintained significantly <100% Reactor Thermal Power. The Completion Time of 4 hours is adequate to accomplish these actions while minimizing risks. Meeting the DNBR margin requirements ensures that power level and ASI [axial shape index] are within a conservative region of operation based on actual core conditions. In addition to the above actions, the Reactor Power Cutback System is disabled. This ensures that CEA position will not be affected by Reactor Power Cutback operation.

Consequently, there is no significant reduction in a margin of safety due to the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Council—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, LA 70113.

NRC Branch Chief: Douglas A. Broaddus.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, (TMI–1) Dauphin County, Pennsylvania

Date of amendment request: May 7, 2014. A publicly-available version is in ADAMS under Accession No. ML14127A424.

Description of amendment request: The amendment would change the TMI–1 technical specifications. Specifically, the proposed amendment would replace an existing Surveillance Requirement to operate ventilation systems with charcoal filters for a 10-hour period every 31 days with a requirement to operate the systems for greater than or equal to 15 continuous minutes every 31 days in accordance with Technical Specification Task Force (TSTF) Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month'' (ADAMS Accession No. ML100890316).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with NRC edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces an existing [Surveillance Requirement] SR to operate the Emergency Control Room Air Treatment System and the Fuel Handling Building [Engineered Safety Feature] ESF Air Treatment System for a 10-hour period at a frequency controlled in accordance with the [Surveillance Frequency Control Program] SFCP with a requirement to operate the systems for greater than or equal to 15 continuous minutes at a frequency controlled in accordance with the SFCP.

These systems are not accident initiators and therefore, these changes do not involve a significant increase in the probability of an accident. The proposed system and filter testing changes are consistent with current regulatory guidance for these systems and will continue to assure that these systems perform their design function, which may include mitigating accidents. Thus, the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces an existing SR to operate the Emergency Control Room Air Treatment System and the Fuel Handling Building ESF Air Treatment System for a 10-hour period at a frequency controlled in accordance with the SFCP with a requirement to operate the systems for greater than or equal to 15 continuous minutes at a frequency controlled in accordance with the SFCP.

The change proposed for these ventilation systems does not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces an existing SR to operate the Emergency Control Room Air Treatment System and the Fuel Handling Building ESF Air Treatment System for a 10-hour period at a frequency controlled in accordance with the SFCP with a requirement to operate the systems for greater than or equal to 15 continuous minutes at a frequency controlled in accordance with the SFCP. The proposed change is consistent with regulatory guidance.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Robert G. Schaaf.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, (BVPS) Unit No. 1, Beaver County, Pennsylvania

Date of amendment request: July 30, 2013. A publicly-available version is in ADAMS under Accession No. ML13212A027.

Description of amendment request: The amendment would change the BVPS Facility Operating License. Specifically, the amendment requests authorization to implement 10 CFR 50.61a, ''Alternate fracture toughness requirements for protection against pressurized thermal shock events,'' in lieu of 10 CFR 50.61, ''Fracture toughness requirements for protection against pressurized thermal shock events.'' The 10 CFR 50.61 screening criteria define a limiting level of reactor pressure vessel embrittlement beyond which plant operation cannot continue without further evaluation. As described in NUREG–1806, ''Technical Basis for Revision of the Pressurized Thermal Shock (PTS) Screening Limit in the PTS Rule (10 CFR 50.61),'' the screening criteria in the PTS rule is overly conservative and the risk of through wall cracking due to a PTS event is much lower than previously estimated. A publicly-available version of NUREG–1806 is in ADAMS under Accession No. ML072830074.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below, with NRC edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This amendment request would allow implementation of the alternate PTS [pressurized thermal shock] rule in lieu of 10 CFR 50.61 and would not involve a significant increase in the probability or consequences of an accident. Application of the alternate PTS rule in lieu of 10 CFR 50.61 would not result in physical alteration of a plant structure, system or component, or installation of new or different types of equipment. Further, application of the alternate PTS rule would not significantly affect the probability of accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR) or cause a change to any of the dose analyses associated with the UFSAR accidents because accident mitigation functions would remain unchanged. Use of the alternate PTS rule would change how fracture toughness of the reactor vessel is determined and does not affect reactor vessel neutron radiation fluence. As such, implementation of the alternate PTS rule in lieu of 10 CFR 50.61 would not increase the likelihood of a malfunction.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The amendment request would allow implementation of the alternate PTS rule in lieu of 10 CFR 50.61. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. No physical plant alterations are made as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The amendment request would authorize implementation of the alternate PTS rule in lieu of 10 CFR 50.61. The alternate PTS rule would maintain the same functional requirements for the facility as 10 CFR 50.61. The alternate PTS rule establishes screening criteria that limit levels of embrittlement beyond which operation cannot continue without further plant-specific evaluation or modifications. Sufficient safety margins are maintained to ensure that any potential increases in core damage frequency and large early release frequency resulting from implementation of the alternate PTS rule are negligible. As such, there would be no significant reduction in the margin of safety as a result of use of the alternate PTS rule. The margin of safety associated with the acceptance criteria of accidents previously evaluated in the UFSAR is unchanged. The proposed change would have no affect on the availability, operability, or performance of the safety-related systems and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Acting Branch Chief: Robert G. Schaaf.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, (BVPS–1 and BVPS–2) Beaver County, Pennsylvania

Date of amendment request: April 16, 2014. A publicly-available version is in ADAMS under Accession No. ML14111A291.

Description of amendment request: The amendment would change BVPS–1 and BVPS–2 technical specifications (TSs). Specifically, the proposed license amendment would revise TS 5.5.12, ''Containment Leakage Rate Testing Program,'' Item a, by deleting reference to the BVPS–1 exemption letter dated December 5, 1984 (ADAMS Accession No. ML003766713), and requiring compliance with Nuclear Energy Institute (NEI) topical report NEI 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J,'' (ADAMS Accession No. ML12221A202) instead of Regulatory Guide 1.163, ''Performance-Based Containment Leak Test Program,'' (ADAMS Accession No. ML003740058) including listed exceptions. In summary, the amendment would allow extension of the Type A Reactor Containment Integrated Leak test, required by 10 CFR Part 50, Appendix J, interval to one test in 15 years and an extension of the Type C test interval to 75 months, based on acceptable performance history of the containment test as defined in NEI 94–01, Revision 3–A.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with NRC edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J,'' for development of the Beaver Valley Power Station, Unit No. 1 (BVPS–1) and Unit No.2 (BVPS–2) performance-based containment testing program. NEI 94–01 allows, based on risk and performance, an extension of Type A and Type C containment leak test intervals. Implementation of these guidelines continues to provide adequate assurance that during design basis accidents, the primary containment and its components will limit leakage rates to less than the values assumed in the plant safety analyses.

The findings of the Beaver Valley Power Station risk assessment confirm the general findings of previous studies that the risk impact with extending the containment leak rate is small. Per the guidance provided in Regulatory Guide 1.174, [An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis (ADAMS Accession No. ML100910006)] [* * *] an extension of the leak test interval in accordance with NEI 94–01 [Revision 3–A] results in an estimated change within the very small change region.

Since the change is implementing a performance-based containment testing program, the proposed amendment does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The requirement for leakage rate acceptance will not be changed by this amendment. Therefore, the containment will continue to perform its design function as a barrier to fission product releases.

Therefore, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to implement a performance-based containment testing program, associated with integrated leakage rate test frequency, does not change the design or operation of structures, systems, or components of the plant. In addition, the proposed changes would not impact any other plant system or component.

The proposed changes would continue to ensure containment integrity and would ensure operation within the bounds of existing accident analyses. There are no accident initiators created or affected by these changes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. [* * *]

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to implement a performance-based containment testing program, associated with integrated leakage rate test frequency, does not affect plant operations, design functions, or any analysis that verifies the capability of a structure, system, or component of the plant to perform a design function. In addition, this change does not affect safety limits, limiting safety system setpoints, or limiting conditions for operation.

The specific requirements and conditions of the Technical Specification Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by Technical Specifications is maintained. This ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by implementation of a performance-based containment testing program.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Acting Branch Chief: Robert G. Schaaf.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 2, 2014. A publicly-available version is in ADAMS under Accession No. ML14157A006.

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station Technical Specifications (TS) to update Figure 4.1–1, ''Site and Exclusion Area Boundaries and Low Population Zone,'' to reflect the current site layout.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change updates a figure with the current site layout. An administrative change such as this is not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with the incorporation of this administrative change are not different than the consequences of the same accident without this change. As a result, the consequences of an accident previously evaluated are not affected by this change.

Based on the above, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not modify the plant design, nor does the proposed change alter the operation of the plant or equipment involved in either routine plant operation or in the mitigation of design basis accidents. The proposed change is administrative only.

Based on the above, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change consists of an administrative change to update a figure of the site layout. The change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Michael T. Markley.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: November 14, 2013. A publicly-available version is in the Agencywide Documents Access and Management System under Accession No. ML13322A446.

Description of amendment request: NSPM proposes to revise the MNGP technical specification (TS) 5.5.11, ''Primary Containment Leakage Rate Testing Program,'' airlock testing conditions. Specifically, NSPM proposes to remove the reduced pressure testing option for drywell airlock door leakage testing in accordance with the requirements of Part 50 to Title 10 of the *Code of Federal Regulations* (10 CFR 50), Appendix J, Option B, since this capability is not required and does not reflect the current testing practice at MNGP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is provided below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change removes the TS allowance to test the leakage rate of the drywell personnel airlock doors at a reduced pressure. However, overall airlock leakage rate testing will continue to be performed in accordance with Option B of 10 CFR 50, Appendix J. Removal of this capability does not affect, nor is it a precursor for, an accident or transient analyzed in the MNGP Updated Safety Analysis Report. The proposed change does not change the total allowable primary containment leakage rate, nor does it involve a change to the physical design and operation of the plant.

Therefore, operation of the facility in accordance with the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change removes the TS allowance to test the leakage rate of the drywell personnel airlock doors at a reduced pressure. However, overall airlock leakage rate testing will continue to be performed in accordance with Option B to 10 CFR 50, Appendix J. The change being proposed will not change the physical plant or modes of operation defined in the facility license. The proposed change does not increase the total allowable primary containment leakage rate. The change does not involve the addition or modification of equipment, nor does it alter the design or operation of plant systems.

Therefore, operation of the facility in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change removes the TS allowance to test the leakage rate of the drywell personnel airlock doors at a reduced pressure. However, overall airlock leakage rate testing will continue to be performed in accordance with Option B to 10 CFR 50, Appendix J. The proposed change does not affect plant safety analyses or change the physical design or operation of the plant. The proposed change does not increase the total allowable primary containment leakage rate.

Therefore, operation of the facility in accordance with the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David L. Pelton.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: June 9, 2014. A publicly-available version is in ADAMS under Accession No. ML14160A593.

Description of amendment request: The proposed amendments would revise the Prairie Island Nuclear Generating Plant, Units 1 and 2, Surveillance Requirements 3.8.1.2, 3.8.1.6, and 3.8.1.9 associated with steady state voltage and frequency limits in Technical Specification3.8.1, ''AC [Alternating Current] Sources—Operating.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This license amendment request proposes to revise specific emergency diesel generator steady states voltage and frequency limits in the Technical Specification Surveillance Requirements which are more restrictive than the current limits.

The emergency diesel generators and the equipment on the safeguards buses supplied by the emergency diesel generators are not accident initiators, and therefore the proposed voltage and frequency limits changes do not involve an increase in the probability of an accident.

The proposed emergency diesel generator surveillance test voltage and frequency limits assure the emergency diesel generators are capable of providing electrical power at voltages and frequencies that are adequate to operate the required equipment on the safeguards buses and thus maintain the current licensing basis for accident mitigation. Thus the proposed voltage and frequency limit changes do not involve a significant increase in the consequences of an accident.

Therefore, the proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

This license amendment request proposes to revise specific emergency diesel generator steady state voltage and frequency limits in the Technical Specification Surveillance Requirements which are more restrictive than the current limits.

The proposed Technical Specification changes which revise the emergency diesel generator voltage and frequency limits do not change any system operations or maintenance activities. The changes do not involve physical alteration of the plant; that is, no new or different type of equipment will be installed. The changes do not alter assumptions made in the safety analyses but ensure that the diesel generators are capable of operating equipment as assumed in the accident analyses. These changes do not create new failure modes or mechanisms which are not identifiable during testing and no new accident precursors are generated.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

This license amendment request proposes to revise specific emergency diesel generator steady state voltage and frequency limits in the Technical Specification Surveillance Requirements which are more restrictive than the current limits.

Since this license amendment proposes Technical Specification changes which further restrict the acceptable voltage and frequency limits, both upper and lower, margins of safety are increased, and no margin of safety is reduced as part of this change.

Therefore, the proposed Technical Specification changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401

NRC Branch Chief: David L. Pelton.

South Carolina Electric and Gas Company Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: March 19, 2014. A publicly-available version is in ADAMS under Accession No. ML14079A599.

Description of amendment request: The requested amendment reclassifies portions of the five Tier 2* Human Factors (HF) Verification & Validation (V&V) planning documents listed in the Updated Final Safety Analysis Report (UFSAR) Table 1.6–1 and Chapter 18, Subsection 18.11.2. These five documents outline the overall plan for the HF V&V, including the Human Factors Engineering (HFE) design verification, task support verification, integrated system validation, discrepancy resolution process, and verification at plant startup. The licensee stated that the requested amendment identifies the portions of the five HF V&V planning documents that would more appropriately be classified as Tier 2, due to those portions having no impact on safety, and proposes the necessary departures to reclassify this information. This differentiation between Tier 2 and Tier 2* information in the HF V&V planning documents will allow for revisions of these documents using the Tier 2 change process provided in 10 CFR Part 52 Appendix D, Section VIII.B.5. Because this proposed change requires a departure from Tier 2* information in the Westinghouse Advanced Passive 1000 design control document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 2* in accordance with 10 CFR Part 52 Appendix D Section VIII B.6.c.(15).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed changes reclassify portions of the five Tier 2* Human Factors (HF) Verification & Validation (V&V) planning documents listed in the Updated Final Safety Analysis Report (UFSAR). These changes do not modify the design, construction, or operation of any plant structures, systems, or components (SSC), nor do they change any procedures or method of control for any SSCs. Because the proposed changes do not change the design, construction, or operation of any SSCs, they do not adversely affect any design function as described in the UFSAR. Therefore, the proposed amendment does not affect the probability of an accident previously evaluated. Similarly, because the proposed changes do not alter the design or operation of the nuclear plant or any plant SSCs, the proposed changes do not represent a change to the radiological effects of an accident, and therefore, they do not involve an increase in the consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes are not a modification, addition to, or removal of any plant SSCs. Furthermore, the proposed changes are not a change to procedures or method of control of the nuclear plant or any plant SSCs. The only impact of this activity is the reclassification of portions of the five HF V&V planning documents as Tier 2 information. Because the proposed amendment does not change the design, construction, or operation of the nuclear plant or any plant operations, it does not affect the possibility of an accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The proposed changes reclassify portions of the five Tier 2* HF V&V planning documents listed in the UFSAR from Tier 2* to Tier 2. The proposed amendment only affects the classification of planning documents and does not change the design, construction, or operation of the nuclear plant or any plant operations; therefore, the changes do not affect any margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC, 20004–2514.

NRC Branch Chief: Lawrence J. Burkhart.

Southern Nuclear Operating Company Docket Nos.: 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: July 3, 2014. A publicly available version is available in the Agencywide Documents Access and Management System under Accession No. ML14187A533.

Description of amendment request: The purpose of the proposed license amendment request is to address proposed changes related to the design details of the containment internal structural wall modules (CA01, CA02, and CA05). The proposed changes to Tier 2 information in the Updated Final Safety Analysis Report (UFSAR), and the involved plant-specific Tier 1 and corresponding combined license Appendix C information would allow the use of thicker than normal faceplates to accommodate local demand or connection loads in certain areas without the use of overlay plates or additional backup structures. Additional proposed changes to Tier 2 information and involved Tier 2* information would allow:

(1) A means of connecting the structural wall modules to the base concrete via use of structural shapes, reinforcement bars, and shear studs extending horizontally from the structural module faceplates and embedded during concrete placement as an alternative to the use of embedment plates and vertically oriented reinforcement bars,

(2) A variance in structural module wall thicknesses from the thicknesses identified in UFSAR Figure 3.8.3–8, ''Structural Modules—Typical Design Details,'' for some walls that separate equipment spaces from personnel access areas, and

(3) The use of steel plates, structural shapes, reinforcement bars, or tie bars between the module faceplates, as needed to support localized loads and ensure compliance with applicable codes.

Because this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 design control document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the requested amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The design function of the internal containment structures is to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in those structures. These structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29.

The changes to the design details for the structural modules do not have an adverse impact on the response of the nuclear island structures to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions, nor do they change the seismic Category I classification.

Evaluations have been performed which determined that the proposed changes do not have a significant impact on the calculated loads for the affected structural modules, or critical locations, and no significant impact on the global seismic model. The changes to the design details for the structural modules do not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors.

Therefore, the requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the requested amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are to revise design details for the internal containment structural modules. The changes do not change the design requirements of the nuclear island structures, nor do they change the seismic Category I classification. The changes to the design details for the internal containment structural modules do not change the design function, support, design, or operation of mechanical and fluid systems. The changes to the design details for the internal containment structural modules do not result in a new failure mechanism for the nuclear island structures or introduce any new accident precursors. As a result, the design function of the nuclear island structures is not adversely affected by the proposed change.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The requested amendment proposes changes to the structural details associated with the in-containment structural modules. The purpose of these changes is to ensure that the requirements contained in the applicable construction codes are met. As discussed in UFSAR, Section 3.8.3.5, ''Design Procedures and Acceptance Criteria,'' the in-containment structural modules are designed in accordance with ACI 349 and AISC N690. Thus, the identification of additional structural module connection details, the increase in structural module faceplate and wall thicknesses, and the addition of additional reinforcement in specific areas are proposed to ensure that the codes of record, and the associated margins contained therein, continue to be met as specified in the design basis. Structural and seismic analysis of the modified sections in accordance with the methodologies identified in the UFSAR has confirmed that the applicable requirements of ACI 349 and AISC N690 continue to be met for affected in-containment structural modules.

As a result, the proposed changes do not adversely affect any safety-related equipment or other design functions, design code compliance, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes. Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Blach & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Lawrence Burkhart.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 6, 2014, as supplemented by letter dated June 9, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML14035A075 and ML14184B363.

Description of amendment request: The proposed license amendment would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System Instrumentation,'' with respect to the required actions and allowed outage times for inoperable reactor trip breakers. The proposed changes would revise the required actions to enhance plant reliability by reducing exposure to unnecessary shutdowns and increase operational flexibility by allowing more time to make required repairs for inoperable reactor trip breakers consistent with allowed outage times for associated logic trains. No modifications to setpoint actuations, trip setpoint, surveillance requirements or channel response that would affect the safety analyses are associated with the proposed changes.

The proposed changes are consistent with requirements generically approved as part of NUREG–1431, Standard Technical Specifications, Westinghouse Plants, Revision 4 (TS 3.3.1, ''Reactor Trip System Instrumentation''). Justification for the proposed changes is based on Westinghouse Electric Company LLC's topical report WCAP–15376–P–A, Revision 1, ''Risk-Informed Assessment of the RTS [Reactor Trip System] and ESFAS [Engineered Safety Feature Actuation System] Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' March 2003 (not publicly available; proprietary).

This application was originally noticed in the **Federal Register** on April 8, 2014 (79 FR 19400), as a license amendment request containing sensitive unclassified non-safeguards information (SUNSI). However, by letter dated June 9, 2014, STP Nuclear Operating Company removed all proprietary markings from Attachment A of Enclosure 1, ''Topical Report Applicability Determination, ST–WN–NOC–13–46,'' originally included in the letter dated January 6, 2014. Therefore, the application is being renoticed in the **Federal Register** to remove the SUNSI designation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The overall reactor trip breaker performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The reactor trip breakers will continue to function in a manner consistent with the plant design basis.

The proposed changes do not introduce any new accident initiators, and therefore do not increase the probability of any accident previously evaluated. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Updated Final Safety Analysis Report.

The determination that the results of the proposed changes are acceptable was established in the NRC Safety Evaluation (issued by letter dated December 20, 2002) prepared for WCAP–15376–P–A, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times'' [ADAMS Accession No. ML023540534]. Implementation of the proposed changes will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions.

Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the Reactor Trip Breakers provide plant protection. The proposed changes do not change the response of the plant to any accidents. No design changes are associated with the proposed changes.

The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria as stated in the Updated Final Safety Analysis Report are not impacted by these changes. Redundant Reactor Trip Breaker features and diverse trip features for each Reactor Trip Breaker are maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses are unaffected by the proposed change. The proposed changes will not result in plant operation in a configuration outside the design basis. The proposed changes should enhance plant reliability by reducing exposure to unnecessary shutdowns and increase operational flexibility by allowing more time to make required repairs for inoperable reactor trip breakers. The calculated impact on risk is insignificant and meets the acceptance criteria contained in NRC Regulatory Guides 1.174 [''An Approach

for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' Revision 2 (ADAMS Accession No. ML100910006)] and 1.177 [''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' Revision 1 (ADAMS Accession No. ML100910008)].

Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 3, 2013, as supplemented by letters dated July 2 and October 2, 2013, and January 15 and May 28, 2014.

Brief description of amendment: The amendment revised the Technical Specifications.

Date of issuance: July 10, 2014.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 260. A publicly-available version is in ADAMS under Accession No. ML14178A599; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–49: Amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register:*** August 20, 2013 (78 FR 51225). The supplemental letters dated July 2 and October 2, 2013, and January 15 and May 28, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 2014.

No significant hazards consideration comments received: No.

Duke Energy Florida, Inc., et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of amendment request: April 25, 2013, as supplemented by letters dated September 4, 2013, and February 26, 2014.

Brief description of amendment: The amendment revised and removed certain requirements from the Section 5.0, ''Administrative Controls,'' portions of the Technical Specifications (TSs) that are no longer applicable to the facility in its permanently shutdown and defueled condition.

Date of issuance: July 11, 2014.

Effective date: As of the date of its issuance and shall be implemented within 30 days of issuance.

Amendment No.: 244. A publicly-available version is in ADAMS under Accession No. ML14097A145; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–72: Amendment revised the Facility Operating License and TSs.

*Date of initial notice in **Federal Register:*** July 23, 2013 (78 FR 44174). The supplemental letter dated September 4, 2013, expanded the scope of the application as originally noticed; therefore, the staff re-noticed the application and included a revised proposed no significant hazards consideration determination on November 12, 2013 (78 FR 67406). The supplemental letter dated February 26, 2014, provided additional information that clarified the supplement dated September 4, 2013, did not expand the scope of the application as noticed on November 12, 2013, and did not change the NRC staff's proposed no significant hazards consideration determination as published in the **Federal Register** on November 12, 2013.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: January 28, 2013, as supplemented by letters dated August 21, 2013, and April 22, 2014.

Brief description of amendment(s): Nuclear Safety Advisory Letter 11–5 identified Westinghouse methodology errors in the long-term mass and energy releases during a large break loss-of-coolant accident. These impacted the containment integrity analysis for Indian Point Unit No. 3 and required revisions to the limiting initial operating conditions (i.e., containment temperature, containment pressure, and refueling water storage tank temperature) and required revisions to Technical Specifications (TSs) 3.5.4, ''Refueling Water Storage Tank (RWST),'' and 3.6.4, ''Containment Pressure.'' In addition, revisions were made to TS 3.6.3, ''Containment Isolation Valves,'' to delete a redundant surveillance requirement and TS 5.5.15, ''Containment Leakage Rate Testing

Program,'' to reflect a slightly higher calculated containment peak pressure.

Date of issuance: July 17, 2014.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 253. A publicly-available version is in ADAMS under Accession No. ML14169A583; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment(s).

Facility Operating License No. DPR–64: The amendment revised the Facility Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 2, 2013 (78 FR 19750). The supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: January 28, 2013, as supplemented by letters dated August 21, 2013, and April 22, 2014.

Brief description of amendment(s): The amendment authorizes revisions to the Indian Point Unit No. 2 Updated Final Safety Analysis Report (UFSAR) to credit four rather than three containment fan cooler units in the containment integrity analysis. A re-analysis of the large break loss-of-coolant accident was performed to correct methodology errors in the long-term mass and energy releases for the containment integrity analysis and crediting four containment fan cooler units for the limiting single failure is necessary to maintain the peak containment pressure within the current analysis of record.

Date of issuance: July 16, 2014.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 276. A publicly-available version is in ADAMS under Accession No. ML14126A809; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–26: The amendment revised the Facility Operating License and the UFSAR.

Date of initial notice in ***Federal Register:*** April 2, 2013 (78 FR 19749). The supplement letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 2014.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (JAFNPP), Oswego County, New York

Date of application for amendment: May 7, 2013, as supplemented by letter dated January 17, 2014.

Brief description of amendment: The amendment revised License Condition 2.T of the JAFNPP Renewed Facility Operating License to be consistent with the license condition contained in NUREG–1905, ''Safety Evaluation Report Related to the License Renewal of James A. FitzPatrick Nuclear Power Plant,'' dated April 2008, and to clarify that the programs and activities described in the Updated Final Safety Analysis Report Supplement and identified in Appendix A of NUREG–1905 are to be completed no later than the start of the period of extended operation (PEO). The change removes any potential inference that any of the activities are being implemented after the PEO begins.

Date of issuance: July 16, 2014.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 306. A publicly-available version is in ADAMS under Accession No. ML14086A152, documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–59: The amendment revised the License.

Date of initial notice in ***Federal Register:*** April 15, 2014 (79 FR 21297).

The January 17, 2014, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 2014.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: July 23, 2012, as supplemented by letter dated May 1, 2013. Publicly-available versions are in ADAMS under Accession Nos. ML12206A057 and ML13122A046, respectively.

Description of amendment: The amendments delete the limiting condition for operation Note associated with technical specifications (TS) Section 3.5.3, ''ECCS—Shutdown.''

Date of issuance: July 21, 2014.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 176/182. A publicly-available version is in ADAMS under Accession No. ML13311B481; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–72. NPF–77, NPF–37, and NPF–66: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** (77 FR 67682), dated November 13, 2012.

The supplement letter dated May 1, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2014.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: December 21, 2012.

Brief description of amendment:

The proposed amendment would revise Technical Specification (TS) 3.3.6, ''Containment Ventilation Isolation Instrumentation.'' Specifically,

this amendment request proposes to revise Footnote (b) of TS Table 3.3.6–1, ''Containment Ventilation Isolation Instrumentation,'' which specifies the ''Containment Radiation—High'' trip setpoint for two containment area radiation monitors (i.e., 1(2)RE–AR011 and 1(2)RE–AR012). The proposed changes would revise the ''Containment Radiation—High'' trip setpoint from the current, overly conservative value (i.e., a submersion dose rate of less than or equal to 10 milliroentgen per hour (mR/hr) in the containment building), to less than or equal to 2 times the containment building background radiation reading at rated thermal power, which is consistent with NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.'' Upon reaching the ''Containment Radiation—High'' setpoint, these area radiation monitors provide an isolation signal to the containment normal purge, minipurge, and post-loss of coolant accident systems' containment isolation valves.

Date of issuance: July 21, 2014.

Effective date: As of the date of issuance and shall be implemented within 165 days.

Amendment Nos.: 178/178; 184/184. (ADAMS Accession No. ML14106A169; documents related to these amendments are in the Safety Evaluation referenced in this notice).

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the TSs and License.

Date of initial notice in ***Federal Register:*** (78 FR 22568), dated April 16, 2013.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2014.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: September 3, 2013, (ADAMS Accession No. ML13246A321).

Brief description of amendments:

The amendments modify technical specifications (TSs) requirements to operate ventilation systems with charcoal filters for 10 hours, at a frequency specified in the Surveillance Frequency Control Program, in accordance with Technical Specification Task Force (TSTF)–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.'' A notice of the availability of TSTF–522 and a model safety evaluation was published in the **Federal Register** on September 20, 2012 (77 FR 58421).

Date of issuance: July 21, 2014.

Effective date: As of the date of issuance and shall be implemented within 105 days.

Amendment Nos.: 177/177; 183/183; 201; 241/234; 208/195; 252/247. A publicly-available version is in ADAMS under Accession No. ML14085A532; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–19, DPR–25, NPF–11, NPF–18, DPR–29, and DPR–30: The amendments revised the TSs and Licenses.

Date of initial notice in ***Federal Register:*** December 24, 2013 (78 FR 77732).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2014.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 28th day of July 2014.

For the Nuclear Regulatory Commission.

A. Louise Lund,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–18395 Filed 8–4–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0168]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of seven amendment requests. The amendment requests are for James A. Fitzpatrick Nuclear Power Plant; Pilgrim Nuclear Power Station; Calvert Cliffs Nuclear Power Plant; LaSalle County Station, Units 1 and 2 (two requests); Nine Mile Point Nuclear Station, Unit 2; Prairie Island Nuclear Power Plant, Units 1 and 2. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by September 4, 2014. A request for a hearing must be filed by October 6, 2014. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by August 15, 2014.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0168. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0168 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0168.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0168 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-

free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. Fitzpatrick Nuclear Power Plant (JAF), Oswego County, New York

Date of amendment request: May 1, 2014. A publicly-available version is in ADAMS under Accession No. ML14143A316.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specification (TS) 2.0, ''Safety Limits (SLs),'' by including new values for the Safety Limit Minimum Critical Power Ratio for both single and dual recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The operation of JAF in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The basis of the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and probability of fuel damage is not increased. The derivation of the revised SLMCPR for JAF, for incorporation into the Technical Specifications and its use to determine plant and cycle-specific thermal limits, has been performed using NRC approved methods. These plant-specific calculations are performed each operating cycle and if necessary, will require future changes to these values based upon revised core designs. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

Based on the above, JAF has concluded that the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. *The operation of JAF in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed changes result only from a specific analysis for the JAF core reload design. These changes do not involve any new or different methods for operating the facility. No new initiating events or transients result from these changes.

Based on the above, JAF has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. *The operation of JAF in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.*

The new SLMCPR is calculated using NRC approved methods with plant and cycle specific parameters for the current core design. The SLMCPR value remains conservative enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure adequate margin when the cycle specific transients are evaluated. Accordingly, the margin of safety is maintained with the revised values.

As a result, JAF has determined that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 31, 2014. A publicly-available version is in ADAMS under Accession No. ML14042A166.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the Cyber Security Plan (CSP) Milestone 8 full implementation date, as set forth in the CSP Implementation Schedule.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the CSP Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the CSP Implementation Schedule is administrative in nature. In addition, the milestone date delay for full implementation of the CSP has no substantive impact because other measures have been taken which provide adequate protection during this period of time. Because there is no change to established safety margins as a result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Benjamin G. Beasley.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

Date of amendment request: September 24, 2013. A publicly-available version is in ADAMS under Accession Nos. ML13301A673 and ML13301A674.

Description of amendments request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would modify the fire protection licensing basis to transition to the requirements of National Fire Protection Association (NFPA) standard 805, pursuant to 10 CFR 50.48(c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The purpose of the proposed amendment is to permit Calvert Cliffs Units 1 and 2 to adopt a new fire protection licensing basis that complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection requirements that are an acceptable alternative to the 10 CFR Appendix R required fire protection features (69 FR 33536, June 16, 2004).

Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based requirements of NFPA 805 have been satisfied. The Updated Final Safety Analysis Report documents the analysis of design basis accidents at Calvert Cliffs Units 1 and 2. The proposed amendment does not affect accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility that would increase the probability of accidents previously evaluated. Further, the changes to be made for fire hazard protection and mitigation do not adversely affect the ability of structures, systems or components to perform their design functions for accident mitigation, nor do they affect the postulated initiators or assumed failure modes for accidents described and evaluated in the UFSAR. Structures, systems or components required to safely shutdown the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design function.

NFPA 805, taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 of Appendix A to 10 CFR 50, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and provides defense-in-depth. The goals, performance objectives and performance criteria specified in Chapter 1 of the standard ensure that, if there are any increases in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated and equipment required to mitigate an accident remains capable of performing the assumed function. The applicable radiological dose criteria will continue to be met.

Based on the above discussion, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any kind of accident previously evaluated?

Response: No.

The proposed change does not alter the requirements or functions for systems required during accident conditions. Implementation of the new fire protection licensing basis, which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance of Regulatory Guide 1.205, will not result in new or different accidents.

The proposed amendment does not introduce new or different accident initiators, nor does it alter design assumptions, conditions, or configurations of the facility in such a manner as to introduce new or different accident initiators. The proposed amendment does not adversely affect the ability of structures, systems, or components to perform their design function. Structures, systems or components required to safely shutdown the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated. Thus, implementation of the proposed amendment would not create the possibility of a new or different kind of accident beyond those already analyzed in the UFSAR. No new accident scenarios, transient precursors, failure mechanisms, or

limiting single failures will be introduced, and there will be no adverse effect or challenges imposed on any safety related system as a result of the proposed amendment.

Based on the above discussion, it is concluded that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The purpose of the proposed amendment is to permit Calvert Cliffs Units 1 and 2 to adopt a new fire protection licensing basis which complies with the requirements on 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify for protection systems and features that are an acceptable alternative to the 10 CFR 50 Appendix R required fire protection features (69 FR 33536, June 16, 2004).

The overall approach of NFPA 805 is consistent with the key principals for evaluating license basis changes, as described in Regulatory Guide 1.174, is consistent with the defense-in-depth philosophy, and maintains sufficient safety margins. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance based methods do not result in a significant reduction in the margin of safety.

The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of structures, systems or components to perform their design function. Structures, systems or components required to safely shutdown the reactor and to maintain it in a safe shutdown condition remain capable of performing their design function.

Based on the above discussion, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Exelon Generation, 200 Exelon Way, Kennett Square, PA 19348.

NRC Branch Chief: Benjamin G. Beasley.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois

Date of amendment request: July 12, 2012, as supplemented by letters dated September 17, 2012, January 18, 2013, February 11, 2013, October 4, 2013, and February 20, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML12200A330, ML122690041, ML13022A476, ML13042A405, ML13282A339, and ML14066A250.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would modify Technical Specification 3.7.3, ''Ultimate Heat Sink,'' by changing the maximum allowable temperature of the ultimate heat sink from a fixed limit of 101.25 degrees Fahrenheit to a variable limit between 101.25 and 104 degrees Fahrenheit depending on the time of day. The proposed amendment was initially published in the **Federal Register** Biweekly notice on April 2, 2013 (78 FR 19746).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change makes no physical changes to the plant, nor does it alter any of the assumptions or conditions upon which the UHS [ultimate heat sink] is designed. These assumptions and conditions as described in the LSCS UFSAR [updated final safety analysis report] include failure of the cooling lake dike, a loss of offsite power and a DBA [design-basis accident] LOCA [loss-of-coolant accident] on one unit, and a normal shutdown of the other unit.

The accidents analyzed in the UFSAR are assumed to be initiated by the failure of plant structures, systems, or components (SSCs). An inoperable UHS is not an initiator of any analyzed events as described in the UFSAR. The impact on the structural integrity of the UHS due to a potential increase water temperature prior to and during the UHS design basis event has been evaluated, and does not increase the probability of the failure of the cooling lake dike. The proposed temperature limit for cooling water supplied to the plant from the CSCS [core standby cooling system] Pond could reduce the commercial capability of the LSCS units; however, it does not result in an increase in the probability of occurrence for any of the events described in the UFSAR.

The basis provided in Regulatory Guide 1.27, ''Ultimate Heat Sink for Nuclear Power Plants,'' Revision 2, dated January 1976, was employed for the temperature analysis of the LSCS UHS to implement General Design Criteria 2, ''Design bases for protection against natural phenomena,'' and 44, ''Cooling water,'' of Appendix A to 10 CFR 50 [Title 10 of the *Code of Federal Regulations* Part 50]. Revision 1 of this Regulatory Guide was employed for the original design and licensing basis of the LSCS UHS, and Revision 2 of this Regulatory Guide was used for the subsequent evaluation, which investigated the potential for changing the average water temperature of the cooling water supplied to the plant from the CSCS Pond from a fixed temperature limit to a limit based on the time of day. The meteorological conditions chosen for the LSCS UHS analysis utilized a critical period consisting of the most severe 33 hour transit time followed by the subsequent 31 calendar days based on historical data. The heat loads selected for the UHS analysis considered failure of the cooling lake dike, a loss of offsite power and a DBA LOCA on one unit, and a normal shutdown of the other unit. The LSCS cooling lake is conservatively assumed to be unavailable at the start of the event. The analysis shows that with an initial UHS temperature less than or equal to the proposed time-of-day-based limit, the required safety-related heat loads can be adequately cooled for 30 days while continuing to ensure safety-related cooling water temperature remains less than the design temperature for LSCS, Units 1 and 2.

Based on the above, it has been demonstrated that the change of the initial temperature limit for cooling water supplied to the plant from the CSCS Pond to less than or equal to a temperature based on the time of day will not impede the ability of the equipment and components cooled by the UHS during a UHS design basis event to perform their safety functions.

There is no impact of this change on LSCS safety analyses including the consequences of all postulated events since all required safety-related equipment continues to perform as designed. The effects of the proposed change on the ability of the UHS to assure that a 30-day supply of water is available considering losses due to evaporation, seepage, and firefighting have been considered. Sufficient inventory remains available to mitigate the design basis event for the LSCS UHS for the required 30-day period.

Therefore, the proposed activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not physically alter the operation, testing, or maintenance of any plant SSCs beyond operating with a UHS temperature limit based on the time of day. The proposed change is supported by appropriate design analysis. Moreover, the UHS temperature does not initiate accident

precursors. The impact of increased UHS temperature can affect the commercial operation of the plant, but the proposed change would not create any accident not considered in the LSCS UFSAR.

This proposed change will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration in the procedures that ensure the LSCS units remain within analyzed limits is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the LSCS safety analysis.

Changing the temperature of cooling water supplied to the plant from the CSCS Pond (i.e., the UHS) as proposed has no impact on plant accident response. The proposed temperature limits do not introduce new failure mechanisms for SSCs. An engineering analysis performed to support the change in temperature of cooling water supplied to the plant from the CSCS Pond provides the basis to conclude that the equipment is adequately designed for operation as proposed.

All systems that are important to safety will continue to be operated and maintained within their design bases, and the proposed change will continue to ensure that all associated systems and components are operated reliably within their design capabilities.

The proposed change will ensure the maximum temperature of the cooling water supplied to the plant during the UHS design basis event remains less than the current safety-related cooling water design temperature for LSCS, Units 1 and 2. Therefore, there is no impact of this change on the LSCS safety analyses including inventory and cooling requirements for safety-related systems using the UHS as their cooling water supply.

All systems will continue to be operated within their design capabilities, no new failure modes are introduced, nor is there any adverse impact on plant equipment; therefore, the proposed change does not result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is determined by the design and qualification of the plant equipment, the operation of the plant within analyzed limits, and the point at which protective or mitigative actions are initiated. The proposed change does not impact any of these factors. There are no required design changes or equipment performance parameter changes associated with the proposed change. No protection setpoints are affected as a result of this change. The proposed change in the limit for the temperature of cooling water supplied to the plant from the CSCS Pond will not change the operational characteristics of the design of any equipment or system. All accident analysis assumptions and conditions will continue to be met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 20, 2013, as supplemented by letter dated February 26, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML13358A354 and ML14057A549.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would modify LSCS, Unit 1, pressure and temperature curves in Technical Specification 3.4.11, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change makes no physical changes to the plant. The proposed amendment incorporates the recent ISP [integrated surveillance program] results into the NRC-approved methodology of the GE Hitachi Nuclear Energy Licensing Topical Report NEDC–33178P–A, Revision 1, for the preparation of the LSCS, Unit 1 P/T [pressure and temperature] limit curves. In 10 CFR 50, Appendix G, requirements are established to protect the integrity of the Reactor Coolant Pressure Boundary in nuclear power plants. Implementing the NRC-approved methodology for calculating P/T limit curves Evaluation of Proposed Changes provide an equivalent level of assurance that Reactor Coolant Pressure Boundary integrity will be maintained, as specified in 10 CFR 50, Appendix G.

The proposed changes do not adversely affect accident initiators or precursors, and do not negatively alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety functions is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

Therefore, the proposed activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The revised P/T limits do not alter or involve any design basis accident initiators. Reactor Coolant Pressure Boundary integrity will continue to be maintained in accordance with 10 CFR 50, Appendix G, and the assumed accident performance of plant structures, systems and components will not be affected. These changes do not involve any physical alteration of the plant (i.e., no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the function of the Reactor Coolant Pressure Boundary or its response during plant transients. By calculating the P/T limits using NRC-approved methodology, adequate margins of safety relating to Reactor Coolant Pressure Boundary integrity are maintained. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There are no changes to setpoints at which protective actions are initiated, and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: November 1, 2013, as supplemented by letters dated January 21, February 14, February 25, March 10, May 14, and June 13, 2014. A publicly-available version is in ADAMS under Accession Nos. ML13316B107, ML13316B109, ML13316B110, ML14023A654, ML14051A138, ML14064A321, ML14064A322, ML14064A323, ML14064A324, ML14071A466, ML14139A416, and ML14169A034.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The license amendment request was originally noticed in the **Federal Register** (FR) on June 6, 2014 (79 FR 32763–32765). This notice is being reissued in its entirety to include the revised description of the amendment request and revised analysis of the issue of no significant hazards consideration submitted by the licensee in its June 13, 2014 submission. The proposed amendment includes changes to the NMP2 Technical Specifications (TSs) necessary to: (1) Implement the Maximum Extended Load Line Limit Analysis Plus (MELLLA+) expanded operating domain; (2) change the stability solution to Detect and Suppress Solution—Confirmation Density (DSS–CD); (3) use the TRACG04 analysis code; and (4) increase the Safety Limit Minimum Critical Power Ratio (SLMCPR) for two recirculation loops in operation.

The following is a list of the proposed changes to the NMP2 TSs:

- Revise Safety Limit (SL) 2.1.1.2 by increasing the SLMCPR for two recirculation loops in operation from ≥1.07 to ≥1.09.
- Revise the acceptance criterion in TS 3.1.7, ''Standby Liquid Control (SLC) System,'' Surveillance Requirement (SR) 3.1.7.7 by increasing the discharge pressure from ≥1,327 pounds per square inch gauge (psig) to ≥1,335 psig.
- Change the Required Actions for Condition F of TS 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation.''
- Change Condition G of TS 3.3.1.1.
- Add new Conditions J and K to TS 3.3.1.1.
- Correct an editorial error in Note 3 to TS SR 3.3.1.1.13 (i.e., ''ORRM'' is changed to ''OPRM'' [Oscillation Power Range Monitor]).
- Eliminate TS SR 3.3.1.1.16 and references to it in TS Table 3.3.1.1–1, ''Reactor Protection System Instrumentation.''
- Change the allowable value (AV) for TS Table 3.3.1.1–1, Function 2.b, Average Power Range Monitor (APRM)—Flow Biased Simulated Thermal Power (STP)—Upscale from ''≤ 0.55W + 60.5% [Rated Thermal Power] RTP and ≤ 115.5% RTP'' to ''≤ 0.61W + 63.4% RTP and ≤ 115.5% RTP.''
- Add a new note to TS Table 3.3.1.1–1, Function 2.b that requires the Flow Biased Simulated Thermal Power—Upscale scram setpoint to be reset to the values defined by the Core Operating Limits Report (COLR) to implement the Automated Backup Stability Protection (BSP) Scram Region in accordance with Required Action F.2 of TS 3.3.1.1.
- Add a new note to TS Table 3.3.1.1–1, Function 2.e, Oscillation Power Range Monitor (OPRM)—Upscale to denote that following implementation of DSS–CD, DSS–CD is not required to be armed while in the DSS–CD Armed Region during the first reactor startup and during the first controlled shutdown that passes completely through the DSS–CD Armed Region. However, DSS–CD is considered operable and capable of automatically arming for operation at recirculation drive flow rates above the DSS–CD Armed Region.
- Change the mode of applicability for TS Table 3.3.1.1–1, Function 2.e, OPRM-Upscale from Mode 1 to ≥18% RTP.
- Change the allowable value for TS Table 3.3.1.1–1, Function 2.e from ''As specified in the COLR'' to ''NA [not applicable].''
- TS Limiting Condition for Operation (LCO) 3.4.1, ''Recirculation Loops Operating,'' is modified to prohibit operation in the Maximum Extended Load Line Limit Analysis (MELLLA) domain or MELLLA+ expanded operating domain as defined in the COLR when in operation with a single recirculation loop.
- Add Required Action B.2 to TS 3.4.1 to identify that intentional operation in the MELLLA domain or MELLLA+ domain as defined in the COLR is prohibited when a recirculation loop is declared ''not in operation'' due to a recirculation loop flow mismatch not within limits.
- Revise TS 5.6.5.a.4 to replace ''Reactor Protection System Instrumentation Setpoint for the OPRM—Upscale Function Allowable Value for Specification 3.3.1.1'' with ''The Manual Backup Stability Protection (BSP) Scram Region (Region I), the Manual BSP Controlled Entry Region (Region II), the modified APRM Simulated Thermal Power—High setpoints used in the OPRM (Function 2.e), Automated BSP Scram Region, and the BSP Boundary for Specification 3.3.1.1.''
- Add TS 5.6.8, ''OPRM Report,'' to define the contents of the report required by new Required Action F.3 of TS 3.3.1.1.

The NRC's approval of the requested operating domain expansion will allow NMP2 to implement operational changes that will increase operational flexibility for power maneuvering, compensate for fuel depletion, and maintain efficient power distribution in the reactor core without the need for more frequent rod pattern changes. MELLLA+ supports operation of NMP2 at Current Licensed Thermal Power (CLTP) of 3,988 Megawatts—Thermal (MW_{th}) with core flow as low as 85% of rated core flow. By operating in the MELLLA+ domain, a significantly lower number of control rod movements will be required than in the present operating domain. This represents a significant improvement in operating flexibility. It also provides safer operation, because reducing the number of control rod manipulations: (a) Minimizes the likelihood of fuel failures, and (b) reduces the likelihood of accidents initiated by reactor maneuvers required to achieve an operating condition where control rods can be withdrawn.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability (frequency of occurrence) of Design Basis Accidents occurring is not affected by implementing the MELLLA+ operating domain and DSS–CD stability solution, because NMP2 continues to comply with the regulatory and design basis criteria established for plant equipment. A SLS [standby liquid control system] failure is not a precursor of any previously evaluated accident in the NMP2 USAR [updated safety analysis report]. The increase to the SLMCPR for two recirculation loops in operation does not increase the probability of an evaluated accident. Consequently, there is no change in the probability of a previously evaluated accident.

The spectrum of postulated transients was investigated and shown to remain within the NRC approved acceptance limits. Fuel integrity is maintained by meeting existing design and regulatory limits. Further, a probabilistic risk assessment demonstrates that the calculated core damage frequency and the large early release frequency do not significantly change due to operation in the MELLLA+ domain.

Challenges to the reactor coolant pressure boundary were evaluated for the MELLLA+ operating domain conditions (pressure, temperature, flow, and radiation) and were found to meet their acceptance criteria for allowable stresses and overpressure margin.

Challenges to the containment were evaluated and the containment and its associated cooling systems continue to meet the current licensing basis. The calculated post LOCA [loss-of-coolant accident] suppression pool temperature remains acceptable.

The SLS is used to mitigate the consequences of an Anticipated Transient Without SCRAM (ATWS) special event and is used to limit the radiological dose during a Loss of Coolant Accident (LOCA). The proposed changes do not affect the capability of the SLS to perform these two functions in accordance with the assumptions of the associated analyses. The ATWS evaluation with the proposed changes incorporated demonstrated that all the ATWS acceptance criteria are met. The ability of the SLS to mitigate radiological dose in the event of a LOCA by maintaining suppression pool pH ≥7.0 is not affected by these changes.

This proposed change to the SLMCPR for two recirculation loops in operation does not result in any modification to the design or operation of the systems that are used in mitigation of accidents. Limits have been established, consistent with NRC approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change to the SLMCPR for two recirculation loops in operation continues to conservatively establish this safety limit such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Equipment that could be affected by implementing the MELLLA+ operating domain and DSS–CD stability solution was evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified. The full spectrum of accident considerations was evaluated and no new or different kind of accident was identified. The MELLLA+ operating domain and DSS–CD stability solution use developed technology and apply it within the capabilities of existing plant safety-related equipment in accordance with the regulatory criteria (including NRC approved codes, standards and methods). No new accident or event precursor was identified.

The long-term stability solution is being changed from the currently approved Option III solution to DSS–CD. DSS–CD is designed to identify the power oscillation upon inception and initiate control rod insertion (scram) to terminate the oscillations prior to any significant amplitude growth exceeding the applicable safety limits. DSS–CD is based on the same hardware design as Option III. However, it introduces an enhanced detection algorithm that detects the inception of power oscillations and generates an earlier power suppression trip signal. The existing Option III algorithms are retained (with generic setpoints) to provide defense-in-depth protection for unanticipated reactor instability events.

Structures, systems, and components (SSCs) previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes do not adversely affect safety-related systems or components and do not challenge the performance or integrity of any safety-related system. The physical change's to the SLS is limited to the increase in the SLS pump discharge pressure acceptance criterion. The proposed changes do not otherwise affect the design or operation of the SLS.

This proposed change to the SLMCPR for two recirculation loops in operation does not result in any modification to the design or operation of the systems that are used in the mitigation of accidents. The proposed change to the SLMCPR for two recirculation loops in operation assures that safety criteria are maintained.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than was previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

Response: No.

The MELLLA+ operating domain affects only design and operational margins. Challenges to the fuel, reactor coolant pressure boundary, and containment were evaluated for the MELLLA+ operating domain conditions. Fuel integrity is maintained by meeting existing design and regulatory limits. The calculated loads on affected SSCs, including the reactor coolant pressure boundary, will remain within their design specifications for design basis event categories. No NRC acceptance criterion is exceeded.

Comprehensive analyses of the proposed changes have concluded that relevant design and safety acceptance criteria will be met without a significant reduction in margins of safety. The analyses have demonstrated that the NMP2 SSCs are capable of safely performing at MELLLA+ conditions. The analyses identified and defined the major input parameters to the Nuclear Steam Supply System (NSSS), analyzed NSSS design transients, and evaluated the capabilities of the NSSS fluid systems, NSSS/Balance of Plant (BOP) interfaces, NSSS control systems, and NSSS and BOP components, as appropriate. Radiological consequences of design basis events remain within regulatory limits and are not increased significantly. The analyses confirmed that NSSS and BOP SSCs are capable of achieving MELLLA+ conditions without significant reduction in margins of safety.

Analyses have shown that the integrity of primary fission product barriers will not be significantly affected as a result of change in the operating domain. Calculated loads on SSCs important to safety have been shown to remain within design allowables with MELLLA+ conditions for all design basis event categories. Plant response to transients and accidents do not result in exceeding acceptance criteria. As appropriate, the evaluations that demonstrate acceptability of MELLLA+ have been performed using methods that have either been reviewed and approved by the NRC staff, or that are in compliance with regulatory review guidance and standards established for maintaining adequate margins of safety. These evaluations demonstrate that there are no significant reductions in the margins of safety.

The SLS is used to mitigate the consequences of an ATWS event and is used to limit the radiological dose during a LOCA. The proposed changes do not affect the capability of the SLS to perform these two functions in accordance with the assumptions of the associated analyses. The ATWS evaluation with the proposed changes incorporated demonstrated that all the ATWS acceptance criteria are met. The ability of the SLS to mitigate radiological dose in the event of a LOCA by maintaining suppression pool pH ≥7.0 is not affected by these changes.

This proposed change to the SLMCPR for two recirculation loops in operation provides a margin of safety by ensuring that no more than 0.1% of fuel rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection is maintained. Additionally, operational limits are established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria are met (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences).

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Gautam Sen, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

NRC Branch Chief: Benjamin Beasley.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota; and Northern States Power Company (NSPC)—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: November 27, 2013, as supplemented by letter dated May 5, 2014. Publicly-available versions are in ADAMS under Accession Nos. ML13333B674 and ML14126A727).

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The license amendment request pertains to the Cyber Security Plan (CSP) implementation schedule change in the completion date for Milestone 8. Milestone 8 pertains to the date that full implementation of the CSP for all safety, security, and emergency preparedness functions will be achieved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The amendment proposes a change to the NSPM Cyber Security Plan (CSP) Milestone 8 (M8) full implementation date.

The revision of the full implementation date for the NSPM CSP does not involve modifications to any safety-related structures, systems or components (SSCs). Rather, the implementation schedule provides a timetable for fully implementing the NSPM CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber-attacks up to and including the design basis cyber-attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are protected from cyber-attacks. The revision of the NSPM CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The amendment proposes a change to the NSPM CSP Milestone 8 (M8) full implementation date.

The revision of the full implementation date for the NSPM CSP does not involve modifications to any safety-related structures, systems or components (SSCs). The implementation of the NSPM CSP does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The amendment proposes a change to the NSPM CSP Milestone 8 (M8) full implementation date.

The revision of the full implementation date for the NSPM CSP does not involve modifications to any safety-related structures, systems or components (SSCs). The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment does not alter the way any safety-related SSC functions and does not alter the way the plant is operated. The Cyber Security Plan provides assurance that safety-related SSCs are protected from cyber-attacks. The proposed amendment does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment does not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Robert D. Carlson.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. Fitzpatrick, Nuclear Power Plant, Oswego County, New York

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Calvert County, Maryland

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota; and

Northern States Power Company, Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are

Hearing.Docket@nrc.gov and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 24th day of July 2014.

For the Commission.

Richard J. Laufer,

Acting Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2014–17949 Filed 8–4–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 5200027; NRC–2008–0441]

Inspections, Tests, Analyses, and Acceptance Criteria; Virgil C. Summer Nuclear Station Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of inspections, tests, analyses, and acceptance criteria (ITAAC).

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for ITAAC 2.1.03.11, for the Virgil C. Summer Nuclear Station Unit 2.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Denise McGovern, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0681, email: *Denise.McGovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Licensee Notification of Completion of ITAAC

On May 30, 2014, South Carolina Electric and Gas Inc. (the licensee) submitted an ITAAC closure notification (ICN) under § 52.99(c)(1) of Title 10 of the *Code of Federal Regulations* (10 CFR) informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses for ITAAC 2.1.03.11, and that the specified acceptance criteria are met for Virgil C. Summer Nuclear Station Unit 2 (ADAMS Accession No. ML14150A424). This ITAAC was approved as part of the issuance of the combined license, NPF–93, for this facility.

NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for Virgil C. Summer Nuclear Station Unit 2, ITAAC 2.1.03.11. This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF), dated June 10, 2014 (ADAMS Accession No. ML14161A578). The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. The ICN presents a narrative description of how the ITAAC was completed, and the NRC's ICN review process involves a determination on whether, among other things, (1) the ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) the ICN provides sufficient information to demonstrate that the acceptance criteria

are met; and (3) any inspections for the ITAAC have been completed and any ITAAC findings associated with the ITAAC have been closed.

The NRC staff's determination of the successful completion of this ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If new information disputes the NRC staff's determination, this ITAAC will be reopened as necessary. The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for this ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of this ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

Dated at Rockville, Maryland, this 28th day of July 2014.

For the Nuclear Regulatory Commission.

Denise McGovern,

Senior Project Manager, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2014–18510 Filed 8–4–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0148]

Light Load Handling System and Refueling Cavity Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 9.1.4, ''Light Load Handling System and Refueling Cavity Design.''

DATES: The effective date of this Standard Review Plan (SRP) update is September 4, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0148 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0148. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email at *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision for the SRP Section 9.1.4, ''Light Load Handling System and Refueling Cavity Design,'' is available in ADAMS under Accession No. ML13318A923. A redline strikeout comparing the proposed revision to the final revision can be found in ADAMS under Accession No. ML13318A954. The responses to public comments can be found in ADAMS under Accession No. ML13318A795.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6992, email: *Jonathan.DeGange@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 11, 2013 (78 FR 41810), the NRC published for public comment the proposed revisions to this section of the SRP. The staff made changes to the proposed revision after consideration of comments received. A summary of the comments and the staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft SRP Section 9.1.4'' (ADAMS Accession No. ML13318A795).

The changes to this SRP chapter reflect current staff review methods and practices based on lessons learned from NRC's reviews of design certification and combined license applications completed since the last revision of this chapter. This chapter has been updated primarily to reflect operating experience associated with IE Bulletin 84–03, ''Refueling Cavity Water Seal'' (ADAMS Accession No. ML082700127).

II. Backfitting and Issue Finality

Issuance of this final SRP section does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future.*

The staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance which is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP on holders of already issued holders of licenses SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality

provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 24th day of July, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–18507 Filed 8–4–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0179]

Maintenance Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—final section; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 17.6, ''Maintenance Rule,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

DATES: The effective date of this Standard Review Plan (SRP) update is September 4, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0179 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0179. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision for Standard Review Plan (SRP) Section17.6, ''Maintenance Rule,'' is available under ADAMS Accession No. ML14099A044. A redline strikeout comparing the proposed and final revision of the document can be found in ADAMS under Accession No. ML14099A053.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6992, email: *Jonathan.DeGange@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 2013 (78 FR 48504), the NRC published for public comment the proposed SRP Section 17.6, ''Maintenance Rule,'' in Chapter 17, ''Quality Assurance,'' of NUREG–0800. The staff received a total of six comments on the draft section. A summary of the comments and the staff's disposition of the comments are available in a separate document, ''*Response to Public Comments on Draft Standard Review Plan, Section 17.6, Maintenance Rule''* (ADAMS Accession No. ML14099A033).

II. Backfitting and Issue Finality

SRP Section 17.6 provides guidance to the staff for reviewing applications for a construction permit and an operating license under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) with respect to compliance with the Maintenance Rule, 10 CFR 50.65 and the guidance in Nuclear Management and Resources Council 93–01 as approved for use by the NRC in Regulatory Guide 1.160. SRP Section 17.6 also provides guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to those same subject matters.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The SRP positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 22nd day of July, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, New Reactor Rulemaking and Guidance Branch, Office of New Reactors.

[FR Doc. 2014–18515 Filed 8–4–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0184]

Proposed Revision to Chilled Water

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 9.2.7, ''Chilled Water.'' The current Standard Review Plan (SRP) does not contain guidance for staff review of chilled water.

DATES: Comments must be filed no later than October 6, 2014. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0184. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6096; email: *Jonathan.Degange@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0184 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0184.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The draft revision for SRP Section 9.27, ''Chilled Water'' Revision 1 is available under ADAMS Accession No. ML14091B061.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0184 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The NRC seeks public comment on the proposed draft section revision of SRP Section 9.2.7. The SRP Section 9.2.7 is a new section providing the NRC Staff guidance on review of chilled water systems.

Following NRC staff evaluation of public comments, the NRC intends to finalize SRP Section 9.2.7 Revision 7 in ADAMS, and post it on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.* The SRP is guidance for the

NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

III. Backfitting and Issue Finality

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations

1. *The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions.

If, in the future, the staff seeks to impose a position in the draft SRP in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 22nd day of July, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–18514 Filed 8–4–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 76–10, 3206–XXXX]

Submission for Review: Assignment, Federal Employees' Group Life Insurance Program

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing collection in use without an OMB control number, Assignment, Federal Employees' Group Life Insurance (FEGLI) Program, RI 76–10. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until October 6, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Retirement Services, Union Square Room 370, 1900 E. Street NW., Washington, DC 20415–3500, Attention: Alberta Butler, or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20503, Attention: Cyrus S. Benson or sent via electronic mail to *Cyrus.Benson@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. 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, e.g., permitting electronic submissions of responses.

The Federal Employees' Group Life Insurance (FEGLI) Program allows an insured individual to transfer ownership, or ''assign'' the FEGLI coverage, to a third party. An insured may assign for several reasons; for example, for financial planning purposes, or to comply with a court order, or to sell the coverage to a third-party. Unlike a designation of beneficiary, once an assignment is executed, it is irrevocable.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Assignment, Federal Employees' Group Life Insurance (FEGLI) Program.

OMB Number: 3206–XXXX.

Frequency: Annually.

Affected Public: Federal employees, retirees, and assignees.

Number of Respondents: 400.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 100 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–18491 Filed 8–4–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB No.: 3206–0179]

Submission for Review: Disabled Dependent Questionnaire

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0179, Disabled Dependent Questionnaire, RI 30–10. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on February 24, 2014 at Volume 79 FR 10202 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until September 4, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. 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, e.g., permitting electronic submissions of responses.

RI 30–10 is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Disabled Dependent Questionnaire.

OMB Number: 3206–0179.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,500.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 2,500 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–18485 Filed 8–4–14; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–23; Order No. 2137]

Amendment to Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Parcel Select Contract 2 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 6, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Request for Supplemental Information
IV. Ordering Paragraphs

I. Introduction

On July 29, 2014, the Postal Service filed notice that it has agreed to a second Amendment to the existing Parcel Select Contract 2 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

The Postal Service also filed the unredacted Amendment under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* at 1.

The Amendment revises Section I.F of the agreement concerning annual price adjustments. *Id.,* Attachment A, at 1. The Postal Service states that the revised language was inadvertently excluded from the first Amendment filed in this docket on March 18, 2014. *Id.* at 1. It asserts that the second Amendment will not materially affect the cost coverage of Parcel Select Contract 2. *Id.* Thus, it asserts that the supporting financial documentation and financial certification previously provided in this docket remain applicable. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 6, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to represent the interests of the

[1] Notice of United States Postal Service of Filing Second Amendment to Parcel Select Contract 2, July 29, 2014 (Notice).

general public (Public Representative) in this docket.

III. Request for Supplemental Information

To clarify the Postal Service's filings in this proceeding, the Postal Service is requested to provide written responses to the following questions:

1. Section I.F.3 of the Amendment states that ''[t]he Postal Service shall supply Customer with the updated price for each cell shown in Table 1 no later than May 1st of each Contract Year.'' *Id.,* Attachment A, at 1. However, the Amendment does not contain any tables. Please clarify what effect the Amendment is intended to have on Table 1 listed directly after Section I.F.4. of the original contract (*e.g.,* remove, replace, or leave Table 1 intact). If the Amendment is intended to replace the table directly after Section I.F.4 of the original contract with a different table, please file the revised table with the Commission.

2. Neither the Notice nor the Amendment contains language describing the effective date of the Amendment. Please identify the effective date of the Amendment.

The Postal Service's response to the request for supplemental information is due no later than August 4, 2014.

IV. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2012–23 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. The Postal Service's response to the request for supplemental information is due no later than August 4, 2014.

4. Comments are due no later than August 6, 2014.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–18422 Filed 8–4–14; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Form S–1, SEC File No. 270–58, OMB Control No. 3235–0065.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–1 (17 CFR 239.11) is used by domestic issuers who are not eligible to use other forms to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form S–1 takes approximately 972.32 hours per response and is filed by approximately 903 issuers annually. We estimate that 25% of the 972.32 hours per response (243.08 hours) is prepared by the issuer for a total annual reporting burden of 219,501 hours (243.08 hours per response × 903 responses).

Written comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 30, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18437 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Form S–3, SEC File No. 270–61, OMB Control No. 3235–0073.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–3 (17 CFR 239.13) is a short form registration statement used by domestic issuers to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form S–3 takes approximately 472.49 hours per response and is filed by approximately 1,153 issuers annually. We estimate that 25% of the 472.49 hours per response (118.12 hours) is prepared by the issuer for a total annual reporting burden of 136,192 hours (118.12 hours per response × 1,153 responses).

Written comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 30, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18438 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 7, 2014 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; litigation matter; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 31, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18537 Filed 8–1–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72719; File No. SR–NYSEMKT–2014–61]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule, Related to Co-Location Services

July 30, 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 July 23, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Equities Price List (''Price List'') and, through NYSE Amex Options LLC (''NYSE Amex Options''), to amend the NYSE Amex Options Fee Schedule (''Fee Schedule''), related to co-location services. The Exchange proposes to implement the fee change effective July 28, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and the Fee Schedule related to co-location services. The Exchange proposes to implement the fee change effective July 28, 2014.[4] The proposed change is intended to, among other things, streamline the offerings available to Users in the data center, make the Price List and Fee Schedule easier to understand and administer, and eliminate references to services that would be discontinued because they are no longer utilized by Users.[5]

Cages

A User is able to purchase a cage to house its cabinets within the data center. A cage would typically be purchased by a User that has several cabinets within the data center and that wishes to arrange its cabinets contiguously while also enhancing privacy around its cabinets. The Exchange charges fees for cages based on the size of the cage, which directly corresponds to the number of cabinets housed therein.[6] The Exchange proposes to amend the Price List and Fee Schedule to reflect that a User must have at least two cabinets in the data

[4] The Securities and Exchange Commission (''Commission'') initially approved the Exchange's co-location services in Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (the ''Original Co-location Approval''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, the term ''User'' includes (i) member organizations, as that term is defined in the definitions section of the General and Floor Rules of the NYSE MKT Equities Rules, and ATP Holders, as that term is defined in NYSE Amex Options Rule 900.2NY(5); (ii) Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B)—Equities and NYSE Amex Options Rule 900.2NY(77); and (iii) non-member organization and non-ATP Holder broker-dealers and vendors that request to receive co-location services directly from the Exchange. *See, e.g.,* Securities Exchange Act Release Nos. 65974 (December 15, 2011), 76 FR 79249 (December 21, 2011) (SR–NYSEAmex–2011–81) and 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR–NYSEAmex–2011–82). As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Securities Exchange Act Release Nos. 67664 (August 15, 2012), 77 FR 50733 (August 22, 2012) (SR–NYSEMKT–2012–10); and 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSEMKT–2012–11).

center to purchase a cage. Existing pricing for cages would not change.

LCN CSP Access

The Exchange's ''Liquidity Center Network'' (''LCN'') is a local area network that is available in the data center. A User is currently able to act as a content service provider (a ''CSP'' User) and deliver services to another User in the data center (a ''Subscribing'' User).[7] These services could include, for example, order routing/brokerage services and/or data delivery services. LCN CSP connections allow the CSP User to send data to, and communicate with, all the properly authorized Subscribing Users at once, via a specific, dedicated LCN connection (an ''LCN CSP'' connection). The Price List and Fee Schedule include related pricing.

The Exchange proposes to discontinue the one gigabit (''Gb'') LCN CSP connection offering, which is no longer utilized by Users, and to remove references to related pricing from the Price List and Fee Schedule. The 10 Gb LCN CSP connection offering would remain available, as would the related pricing in the Price List and Fee Schedule. Also, a CSP User would remain able to deliver its services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from three ''bundled'' connectivity options, at various bandwidths (*i.e.,* one, 10 and 40 Gb), when connecting to the data center. The Exchange proposes to discontinue ''bundled'' connectivity options that are no longer utilized by Users and to remove references to related pricing from the Price List and Fee Schedule. In particular, the Exchange would discontinue (1) ''Option 2'' completely, (2) the 10 Gb LX and 40 Gb bandwidth ''bundles'' under ''Option 1,'' and (3) the one Gb, 10 Gb LX and 40 Gb ''bundles'' under Option 3. Current ''Option 3'' would be renumbered as ''Option 2.''

Initial Install Services

When a User selects a new cabinet in the data center it is charged the ''Initial Install Services'' fee ($800 per dedicated cabinet or $400 for per eight-rack unit in a partial cabinet), which includes initial racking of equipment in the cabinet, provision of a certain number of cables (10 per dedicated cabinet or five per eight-rack unit in a partial cabinet), and a certain number of hours of labor (four per dedicated cabinet or two per eight-rack unit in a partial cabinet).[8]

The Exchange proposes that the Initial Install Services would no longer limit the number of cables that are included and that references to those limits would be removed from the Price List and Fee Schedule. A User would therefore be provided with the number of cables required to provision the cabinet for initial installation. The existing limit on the number of labor hours included would remain.

Hot Hands and Related Services

The Exchange currently offers a ''Hot Hands Service,'' which allows Users to use on-site data center personnel to maintain User equipment.[9] The applicable fee in the Price List and Fee Schedule for Hot Hands Service is $200 per hour if scheduled during normal business hours (*i.e.,* on non-Exchange holidays, Monday to Friday, 9 a.m. to 5 p.m.) and if scheduled at least one day in advance. A higher fee applies if, for example, the Hot Hands Service is scheduled during extended business hours (*i.e.,* Monday to Friday, 5 p.m. to 9 a.m., Exchange holidays, and weekends, if scheduled at least one day in advance) or if the Hot Hands Service is ''expedited'' (*i.e.,* if not scheduled at least one day in advance).

The Exchange proposes to consolidate all the current categories of Hot Hands Service under a single Hot Hands Service category and charge a single rate of $100 per half hour. The proposed $100 per half hour charge would be equivalent to the existing $200 per hour rate in the Price List and Fee Schedule, except that it would reflect a charge for Hot Hands Service in half hour increments. The other existing rates that currently apply to Hot Hands Service during extended business hours or for expedited Hot Hands Service would be discontinued.

Several other related services described in the Price List and Fee Schedule are available to Users, for which the same $200 per hour rate applies as is currently applicable for the standard Hot Hands Service, as follows:[10]

- ''Rack and Stack''
  - Installation of one server in a User's cabinet. This service encompasses handling, unpacking, tagging, and installation of the server as well as one network connection within the User's rack.
- ''Install and Document Cable''
  - Labor charges to install and document the fitting of cable(s) in a User's cabinet(s) in excess of the cables included in the cabinet Initial Install Services fee (as described above); and
- ''Technician Support Service—Non Emergency''
  - Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. One prior day's notice is required.

The Exchange proposes to perform these services under the single Hot Hands Service category proposed above, at the proposed Hot Hands Service rate of $100 per half hour. Because of the elimination of the limit on the number of cables included with the Initial Install Services fee, the ''Install and Document Cable'' service that would be subsumed into the Hot Hands Service fee would apply to additional labor hours needed to complete an initial install above the amount of time included in the Initial Install Services fee (*i.e.,* greater than four hours per dedicated cabinet or two hours per eight-rack unit in a partial cabinet).

Several other related services described in the Price List and Fee Schedule are available to Users in the data center for which the service fee is different than the current $200 per hour Hot Hands Service fee, as follows:[11]

- ''Power Recycling''—$50 per reset.
  - Reboot of power on one server or switch as well as observing and reporting on the status of the reboot back to the User.
- ''Equipment Maintenance Call Escalation''—$100 per call.
  - Hardware maintenance-break fix services.
- ''Technician Support Service—Emergency''—$325 per hour.
  - Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Two hour notice is required.

The Exchange also proposes to perform these services under the single Hot Hands Service category proposed above, similarly at the proposed Hot Hands Service rate of $100 per half hour.

Obsolete Dates

Certain services in the data center that are described in the Price List and Fee

[7] *Id.*

[8] The Exchange explained the Initial Install Services fee when it introduced partial cabinet offerings. *See* Securities Exchange Act Release No. 71131 (December 18, 2013), 78 FR 77750 (December 24, 2013) (SR–NYSEMKT–2013–103).

[9] *See* Original Co-location Approval.

[10] *Id.*

[11] *Id.*

Schedule identify introductory dates during which discounted pricing had been in effect. These dates have passed. The Exchange proposes to eliminate the obsolete references to these dates. This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, an ATP Holder, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [12] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[13]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users 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,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. The Exchange believes that the proposed change is consistent with the Act because it would permit the Exchange to streamline the offerings available to Users in the data center, make the Price List and Fee Schedule easier to understand and administer, and eliminate references in the Price List and Fee Schedule to services that would be discontinued because they are no longer utilized by Users.

The Exchange believes that it is reasonable to require that a User have a minimum of two cabinets in the data center in order to purchase a cage because a User with one cabinet typically would not be interested in placing a cage around a single cabinet, due to the lack of necessity and the added cost that the User would incur. The Exchange also believes that this is reasonable because the existing monthly cage fees reflect the opportunity cost to the Exchange of giving up floor space in the data center for the cage's physical footprint and the value of such space to the User, in that such floor space otherwise could be utilized for additional cabinets for the same or other Users or other Exchange purposes. Placing just a single cabinet in a cage would not be consistent with this opportunity cost. However, existing pricing for cages would not change, and requiring a minimum of two cabinets also would not result in a price increase for a cage, because the price for the cage would not increase until a User's number of cabinets reaches the next pricing tier for cages (*i.e.,* 15–28 cabinets).

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Price List and Fee Schedule because the resulting Price List and Fee Schedule would be more streamlined and easier to read, understand and administer. This would also contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure (*i.e.,* hardware, software, etc.).

The Exchange believes that it is reasonable to eliminate the limit on the number of cables that are included in the Initial Install Services fee because it would assist Users in meeting the growing needs of their business operations. Some Users require fewer cables than the current limits, while other Users require more. However, the Exchange generally anticipates that, on average, these amounts would be consistent with the amounts currently specified in the Price List and Fee Schedule. The existing limits on labor hours would remain. Therefore, a User whose cable requirements result in labor hours that exceed the amount included in the Initial Install Services fee would be required to utilize Hot Hands Service and pay the corresponding fee.

The Exchange believes that it is reasonable to charge a single rate of $100 per half hour for Hot Hands Service, including for Hot Hands Service during extended business hours and for expedited Hot Hands Service. The proposed $100 per half hour charge would be equivalent to the existing $200 per hour rate in the Price List and Fee Schedule, except that it would reflect billing for Hot Hands Service in half hour increments. This is reasonable because it would consolidate several similar services under one category with a single applicable rate, thereby eliminating the need for Users to identify the type of Hot Hands Service they are requesting, the timing for the request, or for the Exchange to monitor and record the initiation time of the corresponding performance of the service. The Exchange believes that charging $100 per half hour is reasonable because it would represent an overall decrease compared to the several, current Hot Hands Service categories (*i.e.,* during extended business hours and for expedited Hot Hands Service).

The Exchange believes that it is reasonable to perform other related services under the Hot Hands Service category, for which the same $200 per hour rate currently applies for the standard Hot Hands Service, because this would simplify the descriptions of the various categories of services available to Users. However, despite the proposed change, the applicable rate would remain consistent with the current rate in the Price List and Fee Schedule (*i.e.,* $100 per half hour instead of $200 per full hour), as would the actual performance of these services, because the data center personnel would be the same as the personnel performing Hot Hands Service.

The Exchange also believes that it is reasonable to perform various other related services under the proposed single Hot Hands Service category, at the proposed rate of $100 per half hour, despite different fees currently applying

[12] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[13] *See* SR–NYSEMKT–2013–67, *supra* note 5 at 50471. The Exchange's affiliates have also submitted the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2014–37 and SR–NYSEArca–2014–81.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

to such services. This would contribute to further simplifying the descriptions of the various categories of services available to Users and make the Price List and Fee Schedule easier to understand and administer. The applicable base rate would decrease for Technician Support Service—Emergency. The current premium that is factored into the $325 per hour rate to account for the ''emergency'' nature of the service request would be eliminated, which is reasonable because it would address the needs of Users to have their requirements attended to in the data center via the Hot Hands Service, even when time is of the essence for resolution. In contrast, the base rate for ''Power Recycling'' would increase from $50 per reset to $100 per half hour. The Exchange believes that this is reasonable because several of the other services in the data center to which Users have access would decrease in cost as a result of this proposal (*i.e.,* Hot Hands Service during extended business hours and for expedited Hot Hands Service as well as the Technician Support Service—Emergency). On balance, therefore, rates charged to Users would decrease as a result of the proposed change, even if a User pays a slightly higher fee for ''Power Recycling'' under the single Hot Hands Service category. Also, while the current rate in the Price List and Fee Schedule for ''Equipment Maintenance Call Escalation'' is $100 per call, this service may only take a half hour to complete, in which case the resulting fee charged to a User may be comparable to the current base rate in the Price List and Fee Schedule. Despite the proposed change, the actual performance of these services would remain the same, because the data center personnel would be the same as the personnel performing Hot Hands Service.

The Exchange believes that it is reasonable to eliminate references in the Price List and Fee Schedule to dates that have already passed because these references are obsolete and no longer have an impact on pricing.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users).

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address a competitive issue with other exchanges that offer co-location or related services, or competitive issues between Users of these services in the data center, but rather to streamline the offerings available to Users in the data center and eliminate references to services that are no longer utilized by Users, thereby making the Price List and Fee Schedule easier to understand and administer.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[16] 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) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] 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) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–61 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–NYSEMKT–2014–61. 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

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

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 20549–1090, 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–NYSEMKT–2014–61 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18433 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72699; File No. SR–NASDAQ–2014–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Term Options Series

July 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on July 25, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend certain rules of The NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 19b-4 thereunder,[4] to: (i) Expand the Short Term Option Program (''STO Program'' or ''Program'') [5] so that the Exchange may change the current thirty option class limitation to fifty option classes on which STOs may be opened; (ii) list or add STOs within fifty percent (50%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is greater than $20, or within one hundred percent (100%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is less than or equal to $20; (iii) open up to thirty STO series for each expiration date in an STO class; (iv) add additional STO strike price intervals to give the Exchange the ability to initiate strike prices in more granular intervals; (v) provide for the ability to open up to five consecutive expirations under the STO Program; (vi) introduce finer strike price intervals for standard expiration contracts in option classes that also have STOs listed on them (''related non-STOs'' or ''related non-Short Term Options''); (vii) add delisting provisions; and (viii) in general harmonize the different parts of the Program.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter IV, Section 6 to expand the STO Program for non-index options so that the Exchange may change the current thirty option class limitation to fifty options classes on which STOs may be opened; list or add STOs within fifty percent (50%) above or below the price of the underlying security [6] from the preceding day if the price of the underlying security is greater than $20, or within one hundred percent (100%) above or below the price of the underlying security from the preceding day if the price of the underlying security is less than or equal to $20; open up to thirty STO series for each expiration date in an STO class; add additional STO strike price intervals to give the Exchange the ability to initiate strike prices in more granular intervals; provide for the ability to open up to five consecutive expirations under the STO Program; introduce finer strike price intervals for standard expiration contracts in option classes that also have STOs listed on them (''related non-STOs'' or ''related non-Short Term Options''); add delisting provisions; and in general harmonize the different parts of the Program.

The STO Program, which was initiated in 2010,[7] is codified in the Supplementary Material to Section 6 of Chapter IV at .07 for non-index options including equity, currency, and exchange traded fund (''ETF'') options.[8] These sections currently state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire on the Friday of the following business week

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] STOs, also known as ''weekly options'' as well as ''Short Term Options'', are series in an options class that are approved for listing and trading on the Exchange in which the series are opened for trading on any Thursday or Friday that is a business day and that expire on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. Chapter IV at Section 6, Supplementary Material .07 governs rules for STO Program rules regarding non-index options. Chapter XIV, Section 11 governs rules for STO Program rules regarding index options, which are not implicated by this proposal.

[6] The price of the underlying security will be calculated commensurate with Supplementary Material .06(a) to Chapter IV, Section 6.

[7] *See* Securities Exchange Act Release No. 62297 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR–NASDAQ–2010–073) (notice of filing and immediate effectiveness to establish a Short Term Options Program).

[8] The Exchange does not by this filing propose any changes to Chapter XIV, Section 11 related to the STO Program for index options.

that is a business day.[9] In addition to the thirty option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes may be opened for trading.[10] Furthermore, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.[11] The Exchange proposes in part to increase the number of STO classes that may be opened, match the opening of initial and additional STO strikes to what is permissible per the OLPP,[12] add new strike prices increments that may be used in the STO Program, and in general harmonize the different parts of the Program (e.g., initial listings and additional series).

The Proposal

First, the Exchange proposes to increase the number of STO classes that may be opened after an option class has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes in Supplementary Material .07(a) of Chapter IV, Section 6 that the Exchange may select up to fifty currently listed option classes on which Short Term Option Series may be opened. The Exchange proposes also that for each option class eligible for participation in the STO Program, the Exchange may open up to thirty STO Series for each expiration date in that class.[13] The Exchange believes that this proposed moderate increase is needed and advisable in light of the demonstrated acceptance and popularity of the STO Program among market participants, as discussed below.

Second, the Exchange proposes to indicate under what circumstances, subsequent to opening initial STO classes, additional STO strike prices may be added. Specifically, the Exchange proposes in Supplementary Material .07(c) to Chapter IV, Section 6 that any initial series listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, additional strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, additional strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. This proposal is in line with the process for adding new series of options found in subsection 3(g)(i) of the OLPP, and harmonizes the Program internally. The Exchange believes that this proposal is a reasonable and desirable enhancement to the STO Program.

Third, the Exchange proposes changes to Supplementary Material .07(d) to Chapter IV, Section 6 to indicate that any additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, additional strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, additional strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. This is done so that the parameters for opening STOs and adding strike prices are in conformity. The Exchange proposes additional changes to Supplementary Material .07(d) to Chapter IV, Section 6 to indicate that if the Exchange has opened less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, the Exchange may also open additional strike prices of Short Term Option Series that are more than 50% above or below the current price of the underlying security (if the price is greater than $20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account are not considered when determining customer interest.[14] This is done to conform the additional strike price methodology with the proposed 50% listing standard in the same subsections, and to ensure that the opening 30 Short Term Option Series language is consistent with other proposed changes,[15] while retaining the

[9] The increase in the number of option issues that could be opened pursuant to the STO Program was approved in 2011. *See* Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–Phlx–2011–131) (approval order). *See also* Phlx Rule 1012 at Commentary .11(a).

[10] However, if the Exchange opens less than twenty (20) STOs for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. Supplementary Material .07(d) to Chapter IV, Section 6. The Exchange proposes, as discussed below, to change twenty (20) Short Term Option Series to thirty (30) Short Term Option Series to achieve consistency with other proposed rule changes.

[11] *See* Supplementary Material .07(d) of Chapter IV, Section 6.

[12] The full name of the OLPP (which is applicable to all option exchanges) is Plan For The Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. With regard to the listing of new series on equity, ETF, or trust issued receipt (''TIRs'') option classes, subsection 3.(g)(i) of the OLPP states, in relevant part, that the exercise price of each option series listed by an exchange that chooses to list a series of options (known as the Series Selecting Exchange) shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, ETF, or TIR at or about the time the Series Selecting Exchange determines to list such series. Except as provided in subparagraphs (ii) through (iv) of the OLPP, if the price of the underlying security is less than or equal to $20, the Series Selecting Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. If the price of the underlying security is greater than $20, the Series Selecting Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Subsection 3.(g)(i) of the OLPP indicates that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying. The Exchange's proposal related to non-index options, while conforming to the current structure of the Exchange's STO rules, is similar in practical effect to the noted OLPP subsection.

[13] The current limitation is up to thirty currently listed option classes and up to twenty series for each expiration date in an STO class. *See* Supplementary Material .07(a) of Chapter IV, Section 6. The Exchange is proposing to include language in the rule that indicates that the addition of strike prices of STOs that are more than 50% above or below the current value of the underlying security (if the price is greater than $20) must comply with the OLPP. The Exchange notes that the number of classes that may participate in the STOS Program is aggregated between equity options and index options and is not apportioned between equity options and index options.

[14] Supplementary Material .06(a) to Chapter IV, Section 6 currently states that if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Immediately before this language, the Exchange proposes to also add a carve-out that states: ''Except as provided in Supplementary Material to Section 6 at .07(d). . .''

[15] The Exchange believes that the 100% standard proposed for initial listings where the price of the

Continued

demonstrated interest language that may be useful in unforeseen circumstances.

Fourth, the Exchange proposes to add language to provide for circumstances where the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange is proposing to add new language to Chapter IV, Section 6 at Supplementary Material .07(d) to provide that in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. This language will conform these rules to other exchange rules.[16]

Fifth, the Exchange proposes to indicate that the interval between strike prices and STOs listed in accordance with the STO Program may be (i) $0.50 or greater where the strike price is less than $75, and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the Short Term Options Series Program [17]; (ii) $0.50 for classes that trade in one dollar increments in Related non-Short Term Options and that participate in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150. Related non-Short Term Option series shall be opened during the month prior to the expiration of such Related non-Short Term Option series in the same manner as permitted in Supplementary Material to Section 6 at .07 and in the same strike price intervals that are permitted in Supplementary Material to Section 6 at .07.

The principal reason for the proposed expansion is in response to market and customer demand to list actively traded products in more granular strike price intervals and to provide Exchange members and their customers increased trading opportunities in the Short Term Option Program, which is one of the most popular and quickly-expanding options expiration programs.[18] The Exchange has observed increased demand for STO classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings have occurred. There are substantial benefits to market participants in the ability to trade eligible option classes at more granular strike price intervals. Furthermore, the Exchange supports the objective of responding to customer demand for harmonized listing between STO and Related non-Short Term Options and the availability of more granular strike price intervals.

For example, assume ABC is trading at $56.54 and the monthly expiration contract is three weeks to expiration. Assume also that the Exchange has listed all available STO expirations and thus has STOs listed on ABC for weeks one, two, four, five, and six. Each of the five weekly ABC expiration dates can be listed with strike prices in $0.50 intervals, including, for example, the $56.50 at-the-money strike. Because the monthly expiration contract has three weeks to expiration, however, the near-the-money strikes must be listed in $5 intervals unless those options are eligible for one of the Exchange's other strike price programs. In this instance, that would mean that investors would be limited to choosing, for example, between the $55 and $60 strike prices instead of the $56.50 at-the-money strike available for STOs. This is the case even though contracts on the same option class that expire both several weeks before and several weeks after the monthly expiration are eligible for finer strike price intervals. Under the proposed rule change, the Exchange would be permitted to list the related non-short term option on ABC, which is less than a month to expiration, in the same strike price intervals as allowed for STOs. Thus, the Exchange would be able to list, and investors would be able to trade, all expirations described above with the same uniform $0.50 strike price interval.

As proposed, the Exchange would be permitted to begin listing the monthly expiration contract in these narrower intervals at any time during the month prior to expiration, which begins on the first trading day after the prior month's expiration date, subject to the provisions of Exchange rules. For example, since the August 2014 monthly option will expire on Saturday, August 16, the proposed rule change will allow the Exchange to list the August 2014 monthly option in short term option intervals starting Monday, July 21. This language will conform these rules to other exchange rules.[19] The Exchange proposes to amend Chapter IV, Section 6(d)(vi) to amend the strike price interval setting parameters for Related non-Short Term Option series. Specifically, the Exchange proposes to add rule text which states, ''notwithstanding any other provision regarding strike prices in Chapter IV, Section 6, non-Short Term Options that are on a class that has been selected to participate in the Short Term Option Series Program (referred to as a ''Related non-Short Term Option series'') shall be opened during the month prior to expiration in the same manner as permitted in Supplementary Material .07 to Chapter IV, Section 6 and in the same strike price intervals that are permitted in Supplementary Material .07 to Chapter IV, Section 6.'' This language is similar to Phlx rule text.[20]

Sixth, the Exchange is proposing to amend Supplementary Material .07 of Chapter IV, Section 6 to open up to five consecutive expirations under the STO Program for trading on the Exchange to allow for the Exchange to delist any series in the STOs that do not have open interest, and to expand the number of series of STOs under limited circumstances. This proposal seeks to allow the Exchange to open STO series for up to five consecutive week expirations. However, a STO expiration will not be added in the same week that a monthly options series expires or, in the case of a Quarterly Options Series (''QOS''),[21] on an expiration that coincides with an expiration of QOS on the same class. In other words, the total number of consecutive expirations will be five, including existing monthly or quarterly expirations.[22] The Exchange

underlying is below $20 is adequate and does not need to be repeated for additional series adds.

[16] *See* Securities Exchange Act Release Nos. 70116 (August 5, 2013), 78 FR 48754 (August 9, 2013) (SR–Phlx–2013–79) and 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (SR–Phlx–2013–101). *See also* Phlx Rule 1012, Commentary .11(d).

[17] STO strike price intervals may also be in $1 increments in Related non-STOs that participate in the STO Program.

[18] Since the inception of the Short Term Options Series Program, it has steadily expanded to the point that by the end of 2012, STOs represented 7% of the total options volume on the Exchange and 13% of the total options volume in the United States.

[19] *See* Securities Exchange Act Release Nos. 67753 (August 29, 2012), 77FR 54635 (September 5, 2012) (SR–Phlx–2012–78); 69633 (May 23, 2013), 78 FR 32498 (May 30, 2013) (SR–Phlx–2013–55); 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (SR–Phlx–2013–101); and 72504 (July 1, 2014), 79 FR 38628 (July 8, 2014) (SR–Phlx–2014–41).

[20] *See* Rule 1012 at Commentary .11(e).

[21] *See* Supplementary Material .04 to Chapter IV, Section 6 for a discussion of Quarterly Options Series.

[22] For example, if QOS expire week 1 and monthly options expire week 3 from now, the proposal would allow the following expirations: Week 1 QOS, week 2 STOs, week 3 monthly, week

believes that the current proposed revision to the STO Program will permit the Exchange to meet increased customer demand. The proposed revision will also provide market participants with the ability to trade and hedge in a greater number of option classes and series.

All options exchanges that have weeklies programs have similar rules regarding their own programs, and tend to emulate STO changes that are initiated by other options exchanges. The Exchange recognizes that while this may result in a potentially increased combined capacity footprint of exchanges with weeklies programs, the specific beneficial changes proposed in this filing greatly outweigh any such potential impact.

The principal reason for the proposed expansion is market demand for additional STO classes and series and a desire to make the STO Program more effective. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms [23] and includes market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings. The Exchange has been requested by traders and other market participants to expand the STO Program to allow additional STO offerings and increased efficiency.

In order that the Exchange not exceed the current thirty option class and twenty option series restriction, the Exchange has on occasion had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO Series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail public customers, who have continued to request the Exchange not to remove STO classes or add STO classes, or have requested the Exchange to expand the STO Program so that additional STO classes and series could be opened that would allow the market participants to execute trading and hedging strategies.[24] There are, as discussed, substantial benefits to market participants having the ability to trade eligible option classes within the STO Program. Furthermore, the Exchange supports the objective of responding to customer need to enhance successful programs to make them more efficient for hedging and trading purposes.

The Exchange notes that the STO Program has been well-received by market participants, in particular by retail investors. The volume of STO trading has increased by 132% since the beginning of 2011 [25] and continues to grow, such that currently STOs represent 20% of trading volume on the Exchange and 31% of trading volume across all option exchanges.[26] The Exchange believes that weekly expiration options will continue to grow in importance for all market participants, including institutional and retail investors.[27]

The proposed revisions to the STO Program will permit the Exchange to meet customer demand for better STO Program use and efficiency, harmonization of OLPP and STO Program rules, internal harmonization of the STO Program, and a reasonable expansion of strike price intervals in the Program.

By way of example, if an investor wants to gain exposure to a relatively higher priced security like GOOGL, he may invest in GOOGL stock and/or GOOGL options. Currently, the investor must choose a strike price that might lack the precision he is looking for in order to gain or reduce exposure to GOOGL. If the investor is looking to invest in a long position in GOOGL, for example, he may choose to execute a covered call strategy by selling calls on GOOGL. Assume GOOGL is trading at $415. Under the current rules the nearest out of the money STO call would be the $420.00 strike, which would, with one week until expiration, trade at or about $2.15. If the $417.50 strike were available per this proposal, however, the investor could sell calls at approximately $3.15. This would allow the investor to still execute an out of the money covered call strategy, but would increase the potential return by $1, or approximately 46% ($1/$2.15), thus offering approximately 46% additional risk protection. To the investor writing covered calls on his GOOGL equity position, this extra risk protection could be very significant on an annual basis, and costly if not available.

By way of a second example, if an investor wants to gain exposure to a lower priced security like Banc of America (BAC), he may invest in BAC stock and/or options. Assume BAC is trading at $14.60. The investor may have established a long position in a non-STO BAC option like, for example, the standard expiration BAC Aug 17th 1.00 calls. To offset some of the risk the investor possesses in the BAC Aug 17th 1.00 calls, the investor may wish to make a corresponding trade in the BAC Aug 10th (STO) 1.00 call. Currently, the investor does not have this risk reduction strategy available to him, as the current BAC STO does not have available strikes. The proposal would correct this shortcoming.

By way of further example, in a lower priced stock such as BAC there may be a need for tighter strike price intervals in case of a precipitous drop in price. Assume BAC is trading at $14.60. Assume BAC announces a large loss, and the stock price drops to $6. The Exchange believes that investors should have the ability to use calls or puts with a more targeted strike price to attain proper risk protection—one of the great advantages of options. Because current STO rules do not allow a strike price below $9.50 in the BAC STO, however, an investor looking to purchase out of the money put protection for a short period of time, and at a lower premium than a longer term option, is not able to do so. BAC $9.50 strike puts would trade at a premium of about $3.50 or more, and would require the investor to sell or exercise his puts by expiration if they remained in the money. An Aug 10th $5.00 out of the money STO option in BAC, on the other hand, would trade a much more affordable premium due to being out of the money, and would only require the investor to sell or exercise his put if the BAC stock price continued

4 STOs, and week 5 STOs. If QOS expire week 3 and monthly options expire week 5, the following expirations would be allowed: Week 1 STOs, week 2 STOs, week 3 QOS, week 4 STOs, and week 5 monthly.

[23] These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

[24] Phlx noted, in its STO Program expansion proposal in 2011, that it was requested by a retail investor to reinstate an STO class that the Exchange had to remove from trading because of the class option limitation within the Program. The investor told the Exchange that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. *See* Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011)(SR–Phlx–2011–131)(order approving opening STO series on 30 option classes).

[25] Since the STO Program was initiated in 2010 on the Exchange and other markets (some of which were established after the STO Program was initiated), STO Program volume has expanded by more than 3000%.

[26] During the same period of time, however, the volume of standard monthly options across all exchanges has, on the other hand, declined by 28%.

[27] The current STO Program, which is similar across all options markets that have weeklies programs, is in its current formulation one of the more challenging industry-wide listings program to administer. Recognizing the importance of the Program, the Exchange is seeking to improve the Program for non-index STOs by making it more uniform and logical.

its precipitous drop. Clearly, the ability to make more targeted and efficient decisions regarding the protection of investments is of great importance to investments and market participants, and should be encouraged.

Following are illustrations of the STO listing process per the rules as proposed. Assume that the Alcoa Inc. (AA) STO closes at $7.92. Pursuant to the proposed rule, STOs may be added between $1 and $15.50 (half point strike intervals are currently permitted where the strike price is below $75). On day one, the maximum number of Short Term Option Series that may be listed are thirty. If the Exchange opens less than thirty Short Term Option Series, additional series may be added as the underlying price moves. If the AA price moves to $10, additional series can be added as high as $20 (100% above the underlying price). If the AA price moves to $5, additional lower strikes would not be added, since the initial strikes go as low as possible ($1). Or, assume that the McDonald's Corporation (MCD) STO closes at $96.26. Pursuant to the proposed rule, Short Term Options Series may be added between $49 and $144 (in $0.50 and $1 intervals). On day one, no more than thirty Short Term Option Series may be listed. If the Exchange opens less than thirty Short Term Option Series, additional series may be added as the underlying price moves. If the MCD price moves to $105, additional series can be added as high as $155 (50% above the underlying price). If the MCD price moves to $87, additional lower strikes can be added as low as $43.50. To list strikes above the 50% threshold, however, there must be demonstrated customer interest for such series, as expressed by institutional, corporate or individual customers or their brokers.

Following are illustrations of the STO delisting process per the rules as proposed. Series delisting would occur under the proposed rule if the stock price moves and there are no series at least 10% above/below the current price. Assume AA closed at $7.92 and strikes were listed between $1 and $15. If the AA price moved to $15, and there were no strikes at $16.50 or above (at least 10% above the current price), the delisting process would begin. For the delisting process, staff would simply need to check what, if any, strikes are higher than the highest strike with open interest, and lower than the lowest strike with open interest. Unlike the current delisting process, there would be no need to check whether strikes were within a listing band (e.g., 10% to 30%). Or, assume that MCD closed at $96.26 and strikes were listed between $82 and $110. If the MCD price moved to $104, and there were no strikes at $115 or above (at least 10% above the current price), the delisting process would begin. For the delisting process, staff would simply need to check what strikes are higher than the highest strike with open interest, and lower than the lowest strike with open interest.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.[28]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [29] in general, and furthers the objectives of Section 6(b)(5) of the Act [30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Expanding the classes and additional series that can be opened in the STO Program, simplifying the delisting process, and allowing $2.50 strike price intervals will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities. Further, the amended rules will allow the Exchange to initiate strike prices in more granular intervals for STOs, which will benefit investors by providing them with the flexibility to more closely tailor their investment and hedging decisions. The Exchange also believes that it is reasonable to harmonize strike prices between STOs and Related non-Short Term Options during expiration month for Related non-Short Term Options, because doing so will ensure conformity between STOs and Related non-Short Term Options that are on the same class. While the proposed rule change may generate additional quote traffic, the Exchange does not believe that any increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. The Exchange also believes that the proposed rule change will ensure competition because it will allow the Exchange to initiate series in the same strike intervals as ISE, CBOE and other options exchanges.[31]

The STO Program has been well-received by market participants and in particular by retail investors and has seen increasing trading volume. The Exchange believes that the current proposed revisions to the STO Program will permit the Exchange to meet customer demand for enhanced STO Program use and efficiency, harmonization of OLPP and STO Program rules, and a reasonable expansion of strike price intervals in the Program to the benefit of investors, market participants, and the marketplace.

With regard to the impact of this proposal on system capacity, the Exchange believes that it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. All exchanges that have STO programs have largely similar STO rules and tend to emulate STO rule changes proposals initiated by other exchanges. While the Exchange recognizes that this proposal may be copied by other exchanges and impact their capacity, the Exchange believes that any such potential capacity impact will not outweigh (and does not outweigh for the Exchange) the significant benefits that this proposal will afford market participants and the market in general in terms of significantly greater flexibility and increases in efficient trading and hedging options.

The proposed revisions to the STO Program will permit the Exchange to meet customer demand for better STO Program use and efficiency,

[28] As noted previously, because the STO Program is an industry-wide program, exchanges tend to emulate the rule filings of one another. The Exchange recognizes that while this may result in a potentially increased combined capacity footprint of exchanges with weeklies programs, the Exchange believes that the specific beneficial changes proposed in this filing greatly outweigh any such potential impact.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *See* ISE Rule 504, CBOE Rule 5.5 and Phlx Rule 1012.

harmonization of OLPP and STO Program rules, internal harmonization of the STO Program, and a reasonable expansion of strike price intervals in the Program.

The Exchange believes that the ability to delist series with no open interest in both the call and the put series will benefit investors by devoting the STO cap to those series that are more closely tailored to the investment decisions and hedging decisions of investors.

Finally, as noted herein, standard expiration options currently trade in wider intervals than their weekly counterparts, except during the week prior to expiration. This creates a situation where contracts on the same option class that expire both several weeks before and several weeks after the standard expiration are eligible to trade in strike price intervals that the standard expiration contract is not. There is continuing strong customer demand to have the ability to execute hedging and trading strategies in the finer strike price intervals available in STOs, and the Exchange believes that the proposed rule change will increase market efficiency by harmonizing strike price intervals for contracts that are close to expiration, whether those contracts happen to be listed pursuant to weekly or monthly expiration cycles.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal is decidedly pro-competitive. The Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[32] and subparagraph (f)(6) of Rule 19b–4 thereunder.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–074 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–NASDAQ–2014–074.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–074 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18375 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(3)(a)(ii).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72710; File No. SR–NYSE–2014–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Exchange's Use of Certain Data Feeds for Order Handling and Execution, Order Routing, and Regulatory Compliance

July 29, 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 July 18, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 5, 2014, in a speech entitled ''Enhancing Our Market Equity Structure,'' [sic] Mary Jo White, Chair of the Securities and Exchange Commission (''SEC'' or the ''Commission'') requested the equity exchanges to file with the Commission the data feeds used for purposes of (1) order handling and execution (*e.g.,* with pegged or midpoint orders); (2) order routing, and (3) regulatory compliance, if applicable.[4] Subsequent to the Chair's speech, the Division of Trading and Markets stated that it ''believes there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof,'' are used for these purposes and requested that proposed rule changes be filed that disclose such information.[5] The stated goal of disclosing this information is to provide broker-dealers and investors with enhanced transparency to better assess the quality of an exchange's execution and routing services.

The data feeds available for the purposes of order handling and execution, order routing, and regulatory compliance include the exclusive securities information processor (''SIP'') data feeds[6] or proprietary data feeds from individual market centers.

(i) Overview of Exchange Rules Governing Order Handling, Execution, and Routing

Before executing any arriving or resting interest, the Exchange evaluates whether the execution would trade through a protected quotation[7] in violation of Rule 611 of Regulation NMS (''Rule 611''),[8] and if so, whether it is eligible for an exception to Rule 611. The Exchange also evaluates whether displaying a bid or offer would result in locking or crossing a protected quotation in violation of Rule 610(d) of Regulation NMS (''Rule 610(d)''),[9] or if it is eligible for an exception to Rule 610(d).

If any protected quotation is superior to the Exchange's best bid or offer, the Exchange may route a marketable order as an Intermarket Sweep Order (''ISO'')[10] (if consistent with the order's instructions), unless a trade-through exception applies under Rule 611(b). Likewise, if the display of an order would lock or cross a protected quotation, the Exchange may route such interest to one or more protected quotations, if consistent with the order's instructions. The Exchange notes that it only routes to away markets for purposes of compliance with Rules 611 and 610(d). The Exchange further notes that its routing brokers do not have any discretion about where to route such interest.[11]

(ii) Exchange's Stated Policy, Practice, or Interpretation With Respect to the Meaning, Administration, or Enforcement of an Existing Rule Regarding how and for what Purpose it Uses Data Feeds

The Exchange uses the SIP data feeds to determine protected quotations on markets other than the Exchange for purposes of compliance with Rule 611 and Rule 610(d), including identifying where to route ISOs, to calculate the PBBO for purposes of order types that are priced based on the PBBO, and to determine the national best bid (''NBB'')[12] for purposes of compliance with Rule 201 of Regulation SHO and Rule 440B.[13]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes

[4] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler, O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at *www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw).*

[5] *See* Letter from James Burns, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission, to Jeffrey C. Sprecher, Chief Executive Officer, Intercontinental Exchange, Inc., dated June 20, 2014.

[6] The SIP feeds are disseminated pursuant to effective joint-industry plans as required by Rule 603(b) of Regulation NMS. 17 CFR 242.603(b). The three joint-industry plans are: (1) The CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for securities with the primary listing market on exchanges other than NASDAQ Stock Market LLC (''Nasdaq''); (2) the CQ Plan, which disseminates consolidated quotation information for securities with their primary listing on exchanges other than Nasdaq; and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities with their primary listing on Nasdaq.

[7] A ''protected bid'' or ''protected offer'' means a quotation in an NMS stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. 17 CFR 242.600(b)(57). A ''protected quotation'' means a protected bid or a protected offer. *See* 17 CRF 242.600(b)(58).

[8] 17 CFR 242.611.

[9] 17 CFR 242.610(d).

[10] An ISO is defined as a limit order for a NMS Stock that (i) when routed to a trading center, is identified as an ISO; and (ii) simultaneously with the routing of the ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the MNMS [sic] stock with a price that is superior to the limit price of the ISO.

[11] *See* NYSE Rule 17(c)(1)(A)(i).

[12] The NBBO is defined as the best bid and best offer of an NMS security that is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. 17 CFR 242.600(b)(3). The Exchange notes that the NBB may differ from the PBB because the NBB includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37). By contrast, a protected quotation is an automated quotation that is the best bid or offer of a national securities exchange. 17 CFR 242.60)(b)(57)(iii) [sic].

[13] NYSE Rule 440B(b) requires that Exchange systems not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB if the price of that security decreases by 10% or more, as determined by the Exchange, from the security's closing price on the Exchange at the end of regular trading hours on the prior day.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because it provides enhanced transparency to better assess the quality of an exchange's execution and routing services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about what data feeds that the Exchange uses for execution and routing decisions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

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–2014–38 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–2014–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–38 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18384 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72709; File No. SR–NYSEMKT–2014–62]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Exchange's Use of Certain Data Feeds for Order Handling and Execution, Order Routing, and Regulatory Compliance

July 29, 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 July 18, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. 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,

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 5, 2014, in a speech entitled ''Enhancing Our Market Equity Structure,'' [sic] Mary Jo White, Chair of the Securities and Exchange Commission (''SEC'' or the ''Commission'') requested the equity exchanges to file with the Commission the data feeds used for purposes of (1) order handling and execution (*e.g.,* with pegged or midpoint orders); (2) order routing, and (3) regulatory compliance, if applicable.[4] Subsequent to the Chair's speech, the Division of Trading and Markets stated that it ''believes there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof,'' are used for these purposes and requested that proposed rule changes be filed that disclose such information.[5] The stated goal of disclosing this information is to provide broker-dealers and investors with enhanced transparency to better assess the quality of an exchange's execution and routing services.

The data feeds available for the purposes of order handling and execution, order routing, and regulatory compliance include the exclusive securities information processor (''SIP'') data feeds[6] or proprietary data feeds from individual market centers.

(i) Overview of Exchange Rules Governing Order Handling, Execution, and Routing

Before executing any arriving or resting interest, the Exchange evaluates whether the execution would trade through a protected quotation[7] in violation of Rule 611 of Regulation NMS (''Rule 611''),[8] and if so, whether it is eligible for an exception to Rule 611. The Exchange also evaluates whether displaying a bid or offer would result in locking or crossing a protected quotation in violation of Rule 610(d) of Regulation NMS (''Rule 610(d)''),[9] or if it is eligible for an exception to Rule 610(d).

If any protected quotation is superior to the Exchange's best bid or offer, the Exchange may route a marketable order as an Intermarket Sweep Order (''ISO'')[10] (if consistent with the order's instructions), unless a trade-through exception applies under Rule 611(b). Likewise, if the display of an order would lock or cross a protected quotation, the Exchange may route such interest to one or more protected quotations, if consistent with the order's instructions. The Exchange notes that it only routes to away markets for purposes of compliance with Rules 611 and 610(d). The Exchange further notes that its routing brokers do not have any discretion about where to route such interest.[11]

(ii) Exchange's Stated Policy, Practice, or Interpretation With Respect to the Meaning, Administration, or Enforcement of an Existing Rule Regarding How and For What Purpose It Uses Data Feeds

The Exchange uses the SIP data feeds to determine protected quotations on markets other than the Exchange for purposes of compliance with Rule 611 and Rule 610(d), including identifying where to route ISOs, to calculate the PBBO for purposes of order types that are priced based on the PBBO, and to determine the national best bid (''NBB'')[12] for purposes of compliance with Rule 201 of Regulation SHO and Rule 440B—Equities.[13]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because it provides enhanced transparency to better assess the quality of an exchange's execution and routing services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about what data feeds that the Exchange uses for execution and routing decisions.

[4] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler, O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at *www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw).*

[5] *See* Letter from James Burns, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission, to Jeffrey C. Sprecher, Chief Executive Officer, Intercontinental Exchange, Inc., dated June 20, 2014.

[6] The SIP feeds are disseminated pursuant to effective joint-industry plans as required by Rule 603(b) of Regulation NMS. 17 CFR 242.603(b). The three joint-industry plans are: (1) The CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for securities with the primary listing market on exchanges other than NASDAQ Stock Market LLC (''Nasdaq''): (2) the CQ Plan, which disseminates consolidated quotation information for securities with their primary listing on exchanges other than Nasdaq; and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities with their primary listing on Nasdaq.

[7] A ''protected bid'' or ''protected offer'' means a quotation in an NMS stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. 17 CFR 242.600(b)(57). A ''protected quotation'' means a protected bid or a protected offer. *See* 17 CRF 242.600(b)(58). The PBBO is the best-priced protected bid and the best-priced protected offer.

[8] 17 CFR 242.611.

[9] 17 CFR 242.610(d).

[10] An ISO is defined as a limit order for a NMS Stock that (i) when routed to a trading center, is identified as an ISO; and (ii) simultaneously with the routing of the ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the MNMS [sic] stock with a price that is superior to the limit price of the ISO.

[11] *See* Rule 17(c)(1)(A)(i)—Equities.

[12] The NBBO is defined as the best bid and best offer of an NMS security that is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. 17 CFR 242.600(b)(3). The Exchange notes that the NBB may differ from the PBB because the NBB includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37). By contrast, a protected quotation is an automated quotation that is the best bid or offer of a national securities exchange. 17 CFR 242.60)(b)(57)(iii) [sic].

[13] Rule 440B(b)—Equities requires that Exchange systems not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB if the price of that security decreases by 10% or more, as determined by the Exchange, from the security's closing price on the Exchange at the end of regular trading hours on the prior day.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–62 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–NYSEMKT–2014–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–62 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18383 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72700; File No. SR–BX–2014–038]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Term Options Series

July 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on July 25, 2014, NASDAQ OMX BX, Inc. (''BX'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Exchange rules pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [3] and Rule 19b–4 thereunder,[4] to: (i) Expand the Short Term Option Program (''STO Program'' or ''Program'') [5] so that the Exchange may change the current thirty option class limitation to fifty option classes on which STOs may be opened; (ii) list or add STOs within fifty percent (50%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is greater than $20, or within one hundred percent (100%) above or below the closing price of the underlying security from the preceding day if the price of the underlying security is less than or equal to $20; (iii) open up to thirty STO series for each expiration date in an STO class; (iv) add additional STO strike price intervals to give the Exchange the ability to initiate strike prices in more granular intervals; (v) provide for the ability to open up to five consecutive expirations under the STO Program; (vi) introduce finer strike price intervals for standard expiration contracts in option classes that also have STOs listed on them (''related non-STOs'' or ''related non-Short Term Options''); (vii) add delisting provisions; and (viii) in general harmonize the different parts of the Program.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] STOs, also known as ''weekly options'' as well as ''Short Term Options'', are series in an options class that are approved for listing and trading on the Exchange in which the series are opened for trading on any Thursday or Friday that is a business day and that expire on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively. Chapter IV at Section 6, Supplementary Material .07 governs rules for STO Program rules regarding non-index options. Chapter XIV, Section 11 governs rules for STO Program rules regarding index options, which are not implicated by this proposal.

principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter IV, Section 6 to expand the STO Program for non-index options so that the Exchange may change the current thirty option class limitation to fifty options classes on which STOs may be opened; list or add STOs within fifty percent (50%) above or below the price of the underlying security [6] from the preceding day if the price of the underlying security is greater than $20, or within one hundred percent (100%) above or below the price of the underlying security from the preceding day if the price of the underlying security is less than or equal to $20; open up to thirty STO series for each expiration date in an STO class; add additional STO strike price intervals to give the Exchange the ability to initiate strike prices in more granular intervals; provide for the ability to open up to five consecutive expirations under the STO Program; introduce finer strike price intervals for standard expiration contracts in option classes that also have STOs listed on them (''related non-STOs'' or ''related non-Short Term Options''); add delisting provisions; and in general harmonize the different parts of the Program.

The STO Program, which was initiated in 2010,[7] is codified in the Supplementary Material to Section 6 of Chapter IV at .07 for non-index options including equity, currency, and exchange traded fund (''ETF'') options.[8] These sections currently state that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire on the Friday of the following business week that is a business day.[9] In addition to the thirty option class limitation, there is also a limitation that no more than twenty series for each expiration date in those classes may be opened for trading.[10] Furthermore, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.[11] The Exchange proposes in part to increase the number of STO classes that may be opened, match the opening of initial and additional STO strikes to what is permissible per the OLPP,[12] add new strike prices increments that may be used in the STO Program, and in general harmonize the different parts of the Program (e.g., initial listings and additional series).

The Proposal

First, the Exchange proposes to increase the number of STO classes that may be opened after an option class has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes in Supplementary Material .07(a) of Chapter IV, Section 6 that the Exchange may select up to fifty currently listed option classes on which Short Term Option Series may be opened. The Exchange proposes also that for each option class eligible for participation in the STO Program, the Exchange may open up to thirty STO Series for each expiration date in that class.[13] The Exchange believes that this proposed moderate increase is needed and advisable in light of the demonstrated acceptance and popularity of the STO Program among market participants, as discussed below.

Second, the Exchange proposes to indicate under what circumstances, subsequent to opening initial STO classes, additional STO strike prices

[6] The price of the underlying security will be calculated commensurate with Supplementary Material .06(a) to Chapter IV, Section 6.

[7] *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047) (notice of filing and immediate effectiveness to establish a Short Term Options Program).

[8] The Exchange does not by this filing propose any changes to Chapter XIV, Section 11 related to the STO Program for index options.

[9] The increase in the number of option issues that could be opened pursuant to the STO Program was approved in 2011. *See* Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–Phlx–2011–131) (approval order). *See also* Phlx Rule 1012 at Commentary .11(a).

[10] However, if the Exchange opens less than twenty (20) STOs for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. Supplementary Material .07(d) to Chapter IV, Section 6. The Exchange proposes, as discussed below, to change twenty (20) Short Term Option Series to thirty (30) Short Term Option Series to achieve consistency with other proposed rule changes.

[11] *See* Supplementary Material .07(d) of Chapter IV, Section 6.

[12] The full name of the OLPP (which is applicable to all option exchanges) is Plan For The Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. With regard to the listing of new series on equity, ETF, or trust issued receipt (''TIRs'') option classes, subsection 3.(g)(i) of the OLPP states, in relevant part, that the exercise price of each option series listed by an exchange that chooses to list a series of options (known as the Series Selecting Exchange) shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, ETF, or TIR at or about the time the Series Selecting Exchange determines to list such series. Except as provided in subparagraphs (ii) through (iv) of the OLPP, if the price of the underlying security is less than or equal to $20, the Series Selecting Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. If the price of the underlying security is greater than $20, the Series Selecting Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Subsection 3.(g)(i) of the OLPP indicates that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying. The Exchange's proposal related to non-index options, while conforming to the current structure of the Exchange's STO rules, is similar in practical effect to the noted OLPP subsection.

[13] The current limitation is up to thirty currently listed option classes and up to twenty series for each expiration date in an STO class. *See* Supplementary Material .07(a) of Chapter IV, Section 6. The Exchange is proposing to include language in the rule that indicates that the addition of strike prices of STOs that are more than 50% above or below the current value of the underlying security (if the price is greater than $20) must comply with the OLPP. The Exchange notes that the number of classes that may participate in the STOS Program is aggregated between equity options and index options and is not apportioned between equity options and index options.

may be added. Specifically, the Exchange proposes in Supplementary Material .07(c) to Chapter IV, Section 6 that any initial series listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, additional strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, additional strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. This proposal is in line with the process for adding new series of options found in subsection 3(g)(i) of the OLPP, and harmonizes the Program internally. The Exchange believes that this proposal is a reasonable and desirable enhancement to the STO Program.

Third, the Exchange proposes changes to Supplementary Material .07(d) to Chapter IV, Section 6 to indicate that any additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, additional strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, additional strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. This is done so that the parameters for opening STOs and adding strike prices are in conformity. The Exchange proposes additional changes to Supplementary Material .07(d) to Chapter IV, Section 6 to indicate that if the Exchange has opened less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, the Exchange may also open additional strike prices of Short Term Option Series that are more than 50% above or below the current price of the underlying security (if the price is greater than $20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account are not considered when determining customer interest.[14] This is done to conform the additional strike price methodology with the proposed 50% listing standard in the same subsections, and to ensure that the opening 30 Short Term Option Series language is consistent with other proposed changes,[15] while retaining the demonstrated interest language that may be useful in unforeseen circumstances.

Fourth, the Exchange proposes to add language to provide for circumstances where the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange is proposing to add new language to Chapter IV, Section 6 at Supplementary Material .07(d) to provide that in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. This language will conform these rules to other exchange rules.[16]

Fifth, the Exchange proposes to indicate that the interval between strike prices and STOs listed in accordance with the STO Program may be (i) $0.50 or greater where the strike price is less than $75, and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the Short Term Options Series Program;[17] (ii) $0.50 for classes that trade in one dollar increments in Related non-Short Term Options and that participate in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150. Related non-Short Term Option series shall be opened during the month prior to the expiration of such Related non-Short Term Option series in the same manner as permitted in Supplementary Material to Section 6 at .07 and in the same strike price intervals that are permitted in Supplementary Material to Section 6 at .07.

The principal reason for the proposed expansion is in response to market and customer demand to list actively traded products in more granular strike price intervals and to provide Exchange members and their customers increased trading opportunities in the Short Term Option Program, which is one of the most popular and quickly-expanding options expiration programs.[18] The Exchange has observed increased demand for STO classes and/or series, particularly when market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings have occurred. There are substantial benefits to market participants in the ability to trade eligible option classes at more granular strike price intervals. Furthermore, the Exchange supports the objective of responding to customer demand for harmonized listing between STO and Related non-Short Term Options and the availability of more granular strike price intervals.

For example, assume ABC is trading at $56.54 and the monthly expiration contract is three weeks to expiration. Assume also that the Exchange has listed all available STO expirations and thus has STOs listed on ABC for weeks one, two, four, five, and six. Each of the five weekly ABC expiration dates can be listed with strike prices in $0.50 intervals, including, for example, the $56.50 at-the-money strike. Because the monthly expiration contract has three weeks to expiration, however, the near-the-money strikes must be listed in $5 intervals unless those options are eligible for one of the Exchange's other strike price programs. In this instance, that would mean that investors would be limited to choosing, for example, between the $55 and $60 strike prices instead of the $56.50 at-the-money strike available for STOs. This is the case even though contracts on the same option class that expire both several weeks before and several weeks after the monthly expiration are eligible for finer strike price intervals. Under the proposed rule change, the Exchange would be permitted to list the related non-short term option on ABC, which is

[14] Supplementary Material .06(a) to Chapter IV, Section 6 currently states that if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Immediately before this language, the Exchange proposes to also add a carve-out that states: ''Except as provided in Supplementary Material to Section 6 at .07(d) . . .''

[15] The Exchange believes that the 100% standard proposed for initial listings where the price of the underlying is below $20 is adequate and does not need to be repeated for additional series adds.

[16] *See* Securities Exchange Act Release Nos. 70116 (August 5, 2013), 78 FR 48754 (August 9, 2013) (SR–Phlx–2013–79) and 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (SR–Phlx–2013–101). *See also* Phlx Rule 1012, Commentary .11(d).

[17] STO strike price intervals may also be in $1 increments in Related non-STOs that participate in the STO Program.

[18] Since the inception of the Short Term Options Series Program, it has steadily expanded to the point that by the end of 2012, STOs represented 7% of the total options volume on the Exchange and 13% of the total options volume in the United States.

less than a month to expiration, in the same strike price intervals as allowed for STOs. Thus, the Exchange would be able to list, and investors would be able to trade, all expirations described above with the same uniform $0.50 strike price interval.

As proposed, the Exchange would be permitted to begin listing the monthly expiration contract in these narrower intervals at any time during the month prior to expiration, which begins on the first trading day after the prior month's expiration date, subject to the provisions of Exchange rules. For example, since the August 2014 monthly option will expire on Saturday, August 16, the proposed rule change will allow the Exchange to list the August 2014 monthly option in short term option intervals starting Monday, July 21. This language will conform these rules to other exchange rules.[19] The Exchange proposes to amend Chapter IV, Section 6(d)(vi) to amend the strike price interval setting parameters for Related non-Short Term Option series. Specifically, the Exchange proposes to add rule text which states, ''notwithstanding any other provision regarding strike prices in Chapter IV, Section 6, non-Short Term Options that are on a class that has been selected to participate in the Short Term Option Series Program (referred to as a ''Related non-Short Term Option series'') shall be opened during the month prior to expiration in the same manner as permitted in Supplementary Material .07 to Chapter IV, Section 6 and in the same strike price intervals that are permitted in Supplementary Material .07 to Chapter IV, Section 6.'' This language is similar to Phlx rule text.[20]

Sixth, the Exchange is proposing to amend Supplementary Material .07 of Chapter IV, Section 6 to open up to five consecutive expirations under the STO Program for trading on the Exchange to allow for the Exchange to delist any series in the STOs that do not have open interest, and to expand the number of series of STOs under limited circumstances. This proposal seeks to allow the Exchange to open STO series for up to five consecutive week expirations. However, a STO expiration will not be added in the same week that a monthly options series expires or, in the case of a Quarterly Options Series (''QOS''),[21] on an expiration that coincides with an expiration of QOS on the same class. In other words, the total number of consecutive expirations will be five, including existing monthly or quarterly expirations.[22] The Exchange believes that the current proposed revision to the STO Program will permit the Exchange to meet increased customer demand. The proposed revision will also provide market participants with the ability to trade and hedge in a greater number of option classes and series.

All options exchanges that have weeklies programs have similar rules regarding their own programs, and tend to emulate STO changes that are initiated by other options exchanges. The Exchange recognizes that while this may result in a potentially increased combined capacity footprint of exchanges with weeklies programs, the specific beneficial changes proposed in this filing greatly outweigh any such potential impact.

The principal reason for the proposed expansion is market demand for additional STO classes and series and a desire to make the STO Program more effective. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms [23] and includes market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings. The Exchange has been requested by traders and other market participants to expand the STO Program to allow additional STO offerings and increased efficiency.

In order that the Exchange not exceed the current thirty option class and twenty option series restriction, the Exchange has on occasion had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO Series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail public customers, who have continued to request the Exchange not to remove STO classes or add STO classes, or have requested the Exchange to expand the STO Program so that additional STO classes and series could be opened that would allow the market participants to execute trading and hedging strategies.[24] There are, as discussed, substantial benefits to market participants having the ability to trade eligible option classes within the STO Program. Furthermore, the Exchange supports the objective of responding to customer need to enhance successful programs to make them more efficient for hedging and trading purposes.

The Exchange notes that the STO Program has been well-received by market participants, in particular by retail investors. The volume of STO trading has increased by 132% since the beginning of 2011 [25] and continues to grow, such that currently STOs represent 20% of trading volume on the Exchange and 31% of trading volume across all option exchanges.[26] The Exchange believes that weekly expiration options will continue to grow in importance for all market participants, including institutional and retail investors.[27]

The proposed revisions to the STO Program will permit the Exchange to meet customer demand for better STO Program use and efficiency, harmonization of OLPP and STO Program rules, internal harmonization of the STO Program, and a reasonable expansion of strike price intervals in the Program.

[19] *See* Securities Exchange Act Release Nos. 67753 (August 29, 2012), 77FR 54635 (September 5, 2012) (SR–Phlx–2012–78); 69633 (May 23, 2013), 78 FR 32498 (May 30, 2013) (SR–Phlx–2013–55); 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (SR–Phlx–2013–101); and 72504 (July 1, 2014), 79 FR 38628 (July 8, 2014) (SR–Phlx–2014–41).

[20] *See* Rule 1012 at Commentary .11(e).

[21] *See* Supplementary Material .04 to Chapter IV, Section 6 for a discussion of Quarterly Options Series.

[22] For example, if QOS expire week 1 and monthly options expire week 3 from now, the proposal would allow the following expirations: Week 1 QOS, week 2 STOs, week 3 monthly, week 4 STOs, and week 5 STOs. If QOS expire week 3 and monthly options expire week 5, the following expirations would be allowed: Week 1 STOs, week 2 STOs, week 3 QOS, week 4 STOs, and week 5 monthly.

[23] These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

[24] Phlx noted, in its STO Program expansion proposal in 2011, that it was requested by a retail investor to reinstate an STO class that the Exchange had to remove from trading because of the class option limitation within the Program. The investor told the Exchange that he had used the removed class as a powerful tool for hedging a market sector, and that various strategies that the investor put into play were disrupted and eliminated when the class was removed. *See* Securities Exchange Act Release No. 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011)(SR–Phlx–2011–131)(order approving opening STO series on 30 option classes).

[25] Since the STO Program was initiated in 2010 on the Exchange and other markets (some of which were established after the STO Program was initiated), STO Program volume has expanded by more than 3000%.

[26] During the same period of time, however, the volume of standard monthly options across all exchanges has, on the other hand, declined by 28%.

[27] The current STO Program, which is similar across all options markets that have weeklies programs, is in its current formulation one of the more challenging industry-wide listings program to administer. Recognizing the importance of the Program, the Exchange is seeking to improve the Program for non-index STOs by making it more uniform and logical.

By way of example, if an investor wants to gain exposure to a relatively higher priced security like GOOGL, he may invest in GOOGL stock and/or GOOGL options. Currently, the investor must choose a strike price that might lack the precision he is looking for in order to gain or reduce exposure to GOOGL. If the investor is looking to invest in a long position in GOOGL, for example, he may choose to execute a covered call strategy by selling calls on GOOGL. Assume GOOGL is trading at $415. Under the current rules the nearest out of the money STO call would be the $420.00 strike, which would, with one week until expiration, trade at or about $2.15. If the $417.50 strike were available per this proposal, however, the investor could sell calls at approximately $3.15. This would allow the investor to still execute an out of the money covered call strategy, but would increase the potential return by $1, or approximately 46% ($1/$2.15), thus offering approximately 46% additional risk protection. To the investor writing covered calls on his GOOGL equity position, this extra risk protection could be very significant on an annual basis, and costly if not available.

By way of a second example, if an investor wants to gain exposure to a lower priced security like Banc of America (BAC), he may invest in BAC stock and/or options. Assume BAC is trading at $14.60. The investor may have established a long position in a non-STO BAC option like, for example, the standard expiration BAC Aug 17th 1.00 calls. To offset some of the risk the investor possesses in the BAC Aug 17th 1.00 calls, the investor may wish to make a corresponding trade in the BAC Aug 10th (STO) 1.00 call. Currently, the investor does not have this risk reduction strategy available to him, as the current BAC STO does not have available strikes. The proposal would correct this shortcoming.

By way of further example, in a lower priced stock such as BAC there may be a need for tighter strike price intervals in case of a precipitous drop in price. Assume BAC is trading at $14.60. Assume BAC announces a large loss, and the stock price drops to $6. The Exchange believes that investors should have the ability to use calls or puts with a more targeted strike price to attain proper risk protection—one of the great advantages of options. Because current STO rules do not allow a strike price below $9.50 in the BAC STO, however, an investor looking to purchase out of the money put protection for a short period of time, and at a lower premium than a longer term option, is not able to do so. BAC $9.50 strike puts would trade at a premium of about $3.50 or more, and would require the investor to sell or exercise his puts by expiration if they remained in the money. An Aug 10th $5.00 out of the money STO option in BAC, on the other hand, would trade a much more affordable premium due to being out of the money, and would only require the investor to sell or exercise his put if the BAC stock price continued its precipitous drop. Clearly, the ability to make more targeted and efficient decisions regarding the protection of investments is of great importance to investments and market participants, and should be encouraged.

Following are illustrations of the STO listing process per the rules as proposed. Assume that the Alcoa Inc. (AA) STO closes at $7.92. Pursuant to the proposed rule, STOs may be added between $1 and $15.50 (half point strike intervals are currently permitted where the strike price is below $75). On day one, the maximum number of Short Term Option Series that may be listed are thirty. If the Exchange opens less than thirty Short Term Option Series, additional series may be added as the underlying price moves. If the AA price moves to $10, additional series can be added as high as $20 (100% above the underlying price). If the AA price moves to $5, additional lower strikes would not be added, since the initial strikes go as low as possible ($1). Or, assume that the McDonald's Corporation (MCD) STO closes at $96.26. Pursuant to the proposed rule, Short Term Options Series may be added between $49 and $144 (in $0.50 and $1 intervals). On day one, no more than thirty Short Term Option Series may be listed. If the Exchange opens less than thirty Short Term Option Series, additional series may be added as the underlying price moves. If the MCD price moves to $105, additional series can be added as high as $155 (50% above the underlying price). If the MCD price moves to $87, additional lower strikes can be added as low as $43.50. To list strikes above the 50% threshold, however, there must be demonstrated customer interest for such series, as expressed by institutional, corporate or individual customers or their brokers.

Following are illustrations of the STO delisting process per the rules as proposed. Series delisting would occur under the proposed rule if the stock price moves and there are no series at least 10% above/below the current price. Assume AA closed at $7.92 and strikes were listed between $1 and $15. If the AA price moved to $15, and there were no strikes at $16.50 or above (at least 10% above the current price), the delisting process would begin. For the delisting process, staff would simply need to check what, if any, strikes are higher than the highest strike with open interest, and lower than the lowest strike with open interest. Unlike the current delisting process, there would be no need to check whether strikes were within a listing band (e.g., 10% to 30%). Or, assume that MCD closed at $96.26 and strikes were listed between $82 and $110. If the MCD price moved to $104, and there were no strikes at $115 or above (at least 10% above the current price), the delisting process would begin. For the delisting process, staff would simply need to check what strikes are higher than the highest strike with open interest, and lower than the lowest strike with open interest.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.[28]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Expanding the classes and additional series that can be opened in the STO Program, simplifying the delisting

[28] As noted previously, because the STO Program is an industry-wide program, exchanges tend to emulate the rule filings of one another. The Exchange recognizes that while this may result in a potentially increased combined capacity footprint of exchanges with weeklies programs, the Exchange believes that the specific beneficial changes proposed in this filing greatly outweigh any such potential impact.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

process, and allowing $2.50 strike price intervals will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities. Further, the amended rules will allow the Exchange to initiate strike prices in more granular intervals for STOs, which will benefit investors by providing them with the flexibility to more closely tailor their investment and hedging decisions. The Exchange also believes that it is reasonable to harmonize strike prices between STOs and Related non-Short Term Options during expiration month for Related non-Short Term Options, because doing so will ensure conformity between STOs and Related non-Short Term Options that are on the same class. While the proposed rule change may generate additional quote traffic, the Exchange does not believe that any increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. The Exchange also believes that the proposed rule change will ensure competition because it will allow the Exchange to initiate series in the same strike intervals as ISE, CBOE and other options exchanges.[31]

The STO Program has been well-received by market participants and in particular by retail investors and has seen increasing trading volume. The Exchange believes that the current proposed revisions to the STO Program will permit the Exchange to meet customer demand for enhanced STO Program use and efficiency, harmonization of OLPP and STO Program rules, and a reasonable expansion of strike price intervals in the Program to the benefit of investors, market participants, and the marketplace.

With regard to the impact of this proposal on system capacity, the Exchange believes that it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. All exchanges that have STO programs have largely similar STO rules and tend to emulate STO rule changes proposals initiated by other exchanges. While the Exchange recognizes that this proposal may be copied by other exchanges and impact their capacity, the Exchange believes that any such potential capacity impact will not outweigh (and does not outweigh for the Exchange) the significant benefits that this proposal will afford market participants and the market in general in terms of significantly greater flexibility and increases in efficient trading and hedging options.

The proposed revisions to the STO Program will permit the Exchange to meet customer demand for better STO Program use and efficiency, harmonization of OLPP and STO Program rules, internal harmonization of the STO Program, and a reasonable expansion of strike price intervals in the Program.

The Exchange believes that the ability to delist series with no open interest in both the call and the put series will benefit investors by devoting the STO cap to those series that are more closely tailored to the investment decisions and hedging decisions of investors.

Finally, as noted herein, standard expiration options currently trade in wider intervals than their weekly counterparts, except during the week prior to expiration. This creates a situation where contracts on the same option class that expire both several weeks before and several weeks after the standard expiration are eligible to trade in strike price intervals that the standard expiration contract is not. There is continuing strong customer demand to have the ability to execute hedging and trading strategies in the finer strike price intervals available in STOs, and the Exchange believes that the proposed rule change will increase market efficiency by harmonizing strike price intervals for contracts that are close to expiration, whether those contracts happen to be listed pursuant to weekly or monthly expiration cycles.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal is decidedly pro-competitive. The Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[32] of the Act and Rule 19b–4(f)(6)(iii) thereunder.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: Necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2014–038 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–BX–2014–038. 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

[31] *See* ISE Rule 504, CBOE Rule 5.5 and Phlx Rule 1012.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6)(iii).

Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2014–038 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18376 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72712; File No. SR–BX–2014–037]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Disclose Publicly the Sources of Data Used for Exchange Functions

July 29, 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 July 16, 2014, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX proposes a rule change to disclose publicly the sources of data, whether from the network processors or from direct data feeds, that BX utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX is requesting a waiver of the requirement to provide notice of the proposed rule change.[3] [sic] included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In her June 5, 2014 market structure speech, the Chair requested that all national securities exchanges review and disclose their policies and procedures governing the market data used when performing important exchange functions.[4] In a letter dated June 20, 2014, the Director of the Division of Trading and Markets codified this request:

> We believe there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof, are used by the exchanges for purposes of (1) order handling and execution (*e.g.,* with pegged or midpoint orders), (2) order routing, and (3) regulatory compliance, as applicable. . . . Accordingly, we ask that proposed rule changes be filed that disclose the particular market data feeds that are used for each of these purposes. Consistent with your recent discussions with Commission staff, we ask that each SRO file these proposed rule changes with the Commission by July 15, 2014.[5]

BX fully supports the Commission's efforts to provide more clarity in this area. Through this proposed rule change, BX is publicly clarifying on a market-by-market basis the specific network processor and proprietary data feeds that BX utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. These complex practices are governed by a few, simple principles that are designed to ensure that BX has the most accurate view of the trading interest available across multiple markets, and to maximize the synchronization of the many exchange functions that depend upon the calculation of an accurate NBBO and top-of-book for each market. These principles are:

1. BX uses a proprietary data feed from each exchange that provides a reliable proprietary data feed. Where no reliable proprietary data feed is available, BX uses the network processor feed;

2. Where BX uses a proprietary data feed for an exchange quote, it also maintains access to the network processor feed as a back-up in the event a specific proprietary feed become unavailable or unusable for any reason;

3. BX uses the same proprietary data feed when performing order handling, routing, and execution functions, and also when the execution and routing system performs internal compliance checks related to those functions; and

4. BX acquires and processes all proprietary and network processor feeds via the same technological configuration (*i.e.,* telecommunication circuitry, switches, and feed handlers) to the greatest extent possible.

5. BX calculates the National Best Bid and Offer (''NBBO'') and top-of-book for each exchange at a single point within the BX system, and then distributes that data simultaneously to numerous applications performing order handling,[6] routing, execution, and internal compliance functions throughout the BX system.

As of the date of this filing, BX utilizes the following data feeds for the handling, execution and routing of

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 14, 2014, NASDAQ OMX did provide notice of an identical filing on behalf of the NASDAQ Stock Market LLC.

[4] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O'Neill & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

[5] *See* Letter from Steven Luparello, Director, SEC Division of Trading and Markets, to Robert Greifeld, Chief Executive Officer, NASDAQ OMX Group, Inc., dated June 20, 2014.

[6] With respect to order handling, the NBBO and top-of-book calculation feeds applications governing the proper processing midpoint orders, pegged orders, price-to-comply orders, and retail orders.

orders, as well as for performing related compliance checks:

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	CQS/UQDF	n/a.
B—NASDAQ OMX BX	BX ITCH 4.1	CQS/UQDF.
D—FINRA ADF	CQS/UQDF	n/a.
J—DirectEdge A	EdgeBook	CQS/UQDF.
K—DirectEdge X	EdgeBook	CQS/UQDF.
M—CSX	CQS/UQDF	n/a.
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF.
P—NYSE Arca	ArcaBook Binary uncompacted	CQS/UQDF.
T/Q—NASDAQ	ITCH 4.1	CQS/UQDF.
W—CBOE	CQS/UQDF	n/a.
X—NASDAQ OMX PSX	PSX ITCH 4.1	CQS/UQDF.
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF.
Z—BATS Exchange	BATS PITCH	CQS/UQDF.

BX uses these feeds to calculate the NBBO via an application called the ''NMSFeed.'' The NMSFeed consumes the BX Protected Quote Service (''NPQS''), which provides an internal view of that exchange's own market data as ITCH, plus the proprietary and network processor market data feeds listed above. The NMSFeed calculates a Regulation NMS-Compliant ''Best Bid or Offer'' (''Compliant BBO''), and then delivers that information throughout the BX System, including to the ''OUCH'' order entry ports,[7] the routing system, and various compliance applications described below.

Upon receipt of an update to a protected quote for a specific venue, the NMSFeed updates its quote for that venue, recalculates the consolidated BBO based upon the update, and recalculates the Compliant BBO after applying BX's own BBO. Any quote that crosses BX's BBO is ignored. BX odd lot orders at the same price are aggregated and considered in the NBBO calculation if the sum is greater than or equal to a round lot. Otherwise, they are not considered in the NBBO calculation. Out of the remaining quotes, the most aggressive remaining bid and offer (excluding BX[8] and any destination which has been excluded from the NBBO in compliance with the self-help procedures under Regulation NMS) is selected and reported as the best quote. If away markets are crossing the market after applying BX's BBO, orders will be accepted as originally priced and have the potential to execute. Any order sent to BX that is not an Intermarket Sweep Order (''ISO'') will have the Compliant BBO check enforced by the system.[9]

The BX OMX Routing and Special Handling System (''RASH'') utilizes the Compliant BBO to determine if and when an order with special processing directives is marketable either against one or more orders in either the Core Matching System or a remote trading venue. RASH also receives market data feeds from certain venues not displaying protected quotes in the national market system for use in ''QDRK'' [sic] and ''QCST'' [sic] routing strategies set forth in BX Rule 4758(a)(1)(A)(iiiv) [sic] and (ix), respectively. RASH maintains a number of routing processes, or Routers, unique to each venue that the System accesses. These Routers maintain a limited set of details for orders that are configured as routable by the user, while also monitoring the current best bid and best offer prices on each exchange.

The BX system includes internal compliance applications related to locked and crossed markets, trade throughs, limit-up/limit-down, and Regulation SHO compliance. Each of these applications utilizes the Compliant BBO to ensure compliance with applicable regulations. BX operates a separate real-time surveillance system that is external to the execution systems and that monitors the execution system's compliance with applicable rules and regulations. The real-time surveillance system utilizes a ''mirrored'' version of the internal NMSFeed in various realtime surveillance patterns, including (1) Lock/Cross, which detects lock/cross events across all markets, regardless of whether or not BX is a participant in the event; (2) Trade Through, which detects potential trade through events for all three BX equity markets; and (3) RegSho, which detects potential RegSho violations, alerting when a trade executes at or below the NBB at the time of order entry while the stock is in a RegSho restricted state.

In addition to the operational transparency provided above, BX is also proposing to add Rule 4759, which will provide for the public display of the proprietary and network processor feeds that BX utilizes in the order handling, routing, and execution processes described above, as well as in the compliance functions described above. BX will display this information on *www.nasdaqtrader.com,* which is heavily used by BX members and their customers.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general and with Sections 6(b)(5) of the Act,[11] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is

[7] OUCH is a protocol that allows BX participants to enter, replace and cancel orders and receive executions. In addition to OUCH, BX offers the FLITE protocol as an option for participants. In this document, references to OUCH also include FLITE because they are interchangeable for these purposes.

[8] Deletion of BX's quote at this stage of the process is necessary because otherwise the system would prevent valid executions on BX in the erroneous belief that such executions would be ''trade throughs'' in violation of Regulation NMS.

[9] In general, any order that is sent to BX with an ISO flag is not re-priced and will be processed at its original price. There are a limited number of circumstances in which an order marked as an ISO will be determined not to be executable at its original price and will be re-priced. These include re-pricing under the Plan to Address Extraordinary Market Volatility, re-pricing to comply with Regulation SHO, and the re-pricing of an order with a post-only condition if BX has an order at that price at the time the order is accepted.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2014–037 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–BX–2014–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2014–037 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18386 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72717; File No. SR–OCC–2014–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Better Manage Risks Concentration and Other Risks Associated With Accepting Deposits of Common Stocks for Margin Purposes

July 30, 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 July 15, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend its Rules to permit OCC to better manage concentration and other risks (i.e., wrong-way risk) associated with accepting deposits of common stock for margin purposes. In order to manage such risks, OCC proposes to add an proposed Interpretation and Policy that will provide OCC with discretion with respect to giving value to margin collateral deposited by a single clearing member.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC also filed the proposed rule change as an advance notice under Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). *See* SR–OCC–2014–803.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit OCC to better manage concentration risk and other risks (i.e., wrong-way risk) associated with accepting deposits of common stock for margin purposes.[4] Accordingly, in order to manage such risks, OCC proposes to add an Interpretation and Policy to Rule 604, which specifies the forms of margin assets accepted by OCC, that will provide OCC with discretion with respect to giving value to assets deposited by a single clearing member to satisfy its margin requirement(s). In addition, OCC proposes to make clarifying amendments to an existing Interpretation and Policy under Rule 604 that gives OCC discretion to not give value to a particular type of margin collateral across all clearing members.

Background

OCC Rule 604 lists the types of assets that clearing members may deposit with OCC to satisfy their margin requirement(s) as well as sets forth eligibility criteria for such assets. Common stocks, including Exchange Traded Funds (''ETFs'') and Exchange Traded Notes (''ETNs''), are the most common form of margin assets deposited by clearing members and currently comprise 68% of the $60.6 billion in clearing member margin deposits held by OCC (not including deposits in lieu of margin). Since 2009, OCC has used STANS, its daily automated Monte Carlo simulation-based margining methodology, to value common stocks deposited by clearing members as margin.[5] The value given to margin deposits depends on factors that include the price volatility and the price correlation relationship of common stock collateral to the balance of the cleared portfolio. The approach used by STANS incentivizes clearing members who chose to meet their margin obligations with deposits of common stocks to choose common stocks that hedge their related open positions.

Notwithstanding the value STANS gives to deposits of common stocks, certain factors warrant OCC adjusting the value STANS gives to all clearing member margin deposits of a particular type of margin collateral. Such factors are set forth in Rule 604, Interpretation and Policy .14, and include the number of outstanding shares, number of outstanding shareholders and overall trading volume. OCC is proposing to add a new Interpretation and Policy to Rule 604 (the ''Interpretation'') so that OCC has discretion to not give margin credit to a particular clearing member when such clearing member deposits a concentrated amount of any common stock and when a common stock, deposited as margin, presents ''wrong-way risk'' to OCC. In addition, the Interpretation will provide OCC discretion to grant margin credit to a clearing member when it deposits shares of common stock that serve as a hedge to the clearing member's related open positions and would otherwise be not be given margin credit.[6]

Concentrated Deposits of Common Stock

OCC has determined that in the event it is necessary to liquidate a clearing member's positions (including the clearing member's margin collateral), OCC may be exposed to risk arising from a large quantity of a particular common stock deposited as margin by a clearing member. Specifically, depending on the relationship between the average daily trading volume of a particular security and the number of outstanding shares of such security deposited by a clearing member as margin, it is possible that the listed equities markets may not be able to quickly absorb all of the common stock OCC seeks to sell, or OCC may not be able to auction such securities, without an appreciable negative price impact. This occurrence, referred to as ''concentration risk,'' is greatest when the number of shares being sold is large and the average daily trading volume is low.

OCC's existing authority to not give value to otherwise eligible forms of margin is broad in its application since such authority only provides OCC with the discretion to not give value across all clearing member deposits of a particular common stock. However, concentration risk may be a clearing member and account-specific risk. In order to mitigate the concentration risk of a single clearing member, OCC plans to implement automated processes to monitor the composition of a clearing member's margin deposits. Such processes will identify concentration risk at both an account level and across all accounts of a clearing member. OCC proposes to add the Interpretation so that OCC has discretion to limit the margin credit granted to an individual clearing member that maintains a concentrated margin deposit of otherwise eligible common stock.

For the reasons stated above, OCC considers a common stock's average daily trading volume and the number of shares a clearing member deposited as margin to be the two most significant factors when making a decision to limit margin credit due to concentration risk. Accordingly, OCC will not give margin credit to clearing member margin deposits of a particular common stock in respect of a particular account when the deposited amount of such common stock is in excess of two times the average daily trade volume of such common stock over the most recent three month period. OCC's systems will continually assess the composition of clearing member margin deposits for each account maintained by the clearing member, including intra-day collateral substitutions in such accounts, to determine if a clearing member has a margin deposit with a concentrated amount of common stock. With respect to a given account, OCC's systems will automatically set appropriate limits on the amount of a particular common stock for which a clearing member may be given margin credit for any one of a its tier accounts. In addition, and with respect to all of a clearing member's accounts, OCC will impose an add-on margin charge if, in aggregate, a clearing member deposits a concentrated amount of a particular common stock as margin across all of its accounts.[7] The add-on margin charge will operate to negate the margin credit given to the concentrated margin deposit, and will be collected, when applicable, as part of OCC's standard morning margin process.[8] OCC

[4] This proposed rule change has also been filed as an advance notice filing (SR–OCC–2014–803).

[5] *See* Securities Exchange Act Release No. 58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20).

[6] Consistent with the language contained in existing Interpretation & Policy .14, the Interpretation provides OCC with discretion in determining the amount of margin credit given to deposits of common stock by an individual clearing member as such determination would be based on positions held and common stock deposits made by such clearing member on a given business day. However, as discussed in the following two sections, OCC also has developed certain automated processes as well as additional internal policies that describe how OCC presently intends to exercise such discretion. These additional internal policies are included in OCC's collateral risk management policy, which will not be implemented until approval of this rule change with changes thereto being subject to additional rule filings.

[7] OCC believes that this policy is consistent with proposed Rule 17Ad–22(e)(5), which requires covered clearing agencies to set and enforce concentration limits to manage its or its participant's credit exposure. *See* 79 FR 16866, 16972 (March 26, 2014).

[8] Since the 2-day limit is first checked at each account, it is possible that a clearing member with multiple accounts may have more than 2-days of a given common stock on deposit in aggregate. To control this condition, a final check is done on the aggregate amount of shares held by a clearing member across all of its accounts. For example, if

will assess the add-on margin charge across all of a clearing member's accounts on a pro-rata basis (based on the amount of the particular common stock in each of a clearing member's accounts).

OCC staff has been monitoring concentrated common stock positions, assessing the impact of the proposed rule change described in this filing and contacting clearing members affected by the proposed rule change. OCC believes that clearing members will be able to comply with the proposed rule change without making significant changes to their day-to-day business operations. In December 2013, an information memo was posted to inform all members of the upcoming change. Since January 2014, staff has been in contact with any clearing member that would be affected by the proposed rule change. On a weekly basis, any clearing member that would see a reduction of 10% or more of its collateral value is contacted and provided an explanation of the policy and a list of concentrated positions observed in this analysis. On a monthly basis, all clearing members exhibiting any concentration risk are contacted to provide an explanation of the proposed policy and a list of concentrated positions. In both cases, clearing members are encouraged to proactively reduce concentrated positions to conform to the proposed policy. As of June 2014, twenty-five members would be affected. Implementation of the Interpretation would result in disallowing $1.2 billion in collateral value and result in margin calls for six members totaling $710 million. Moreover, in July 2014, OCC made an automated report concerning concentrated margin deposits of common stock available to all clearing members.

Wrong-Way Risk

OCC is also proposing to use the Interpretation to address the risk that the common stock a clearing member has deposited as margin and which is issued by the clearing member itself or an affiliate of the clearing member will lose value in the event the clearing member providing such margin defaults, which is known as ''wrong-way risk.'' Wrong-way risk occurs when a clearing member makes a deposit of common stock issued by it or an affiliate and, in the event the clearing member defaults, the clearing member's common stock margin deposit will also be losing value at the same time because there is likely to be a strong correlation between the clearing member's creditworthiness and the value of such common stock. In order to address wrong-way risk, the Interpretation will implement automated systems that will not give margin credit to a clearing member that deposits common stock issued by such clearing member or an affiliate as margin collateral. OCC proposes to define ''affiliate'' broadly in the Interpretation to include any entity with direct or indirect equity ownership of 10% of the clearing member, or any entity for which the clearing member holds 10% of the direct or indirect equity ownership.[9]

OCC has addressed the impact of the change designed to address wrong-way risk. As of June 2014, there were 73 clearing members whose parent or an affiliate has issued securities trading on U.S. exchanges. There are six clearing members that would be affected by virtue of having made margin deposits of their own or an affiliate's common stock. In total, these shares equaled $132 million and accounted for less than one half of one percent of the total market value of valued securities pledged as margin at OCC. In July 2014, OCC made information available to each clearing member that indicates which of its deposits of common stock would not receive margin credit due to wrong-way risk considerations, as described above.[10]

Deposits That Hedge Open Positions

In addition to the above, OCC also proposes to include language in the Interpretation so that it has discretion to give margin credit to common stock deposited as margin that would otherwise not be given margin credit in circumstances when such common stock acts as a hedge (i.e., the member holds an equivalent short position in cleared contracts on the same underlying security). This condition will be checked in both the account and clearing member level. For example, if a clearing member deposits the common stock of an affiliate as margin collateral, which, pursuant to the above, would ordinarily not be given value for the purposes of granting margin credit, OCC may nevertheless give value to such common stock for the purposes of granting margin credit to the extent such common stock acts as a hedge against open positions of the clearing member. In this case, a decline in the value of the margin deposit would be wholly or partially offset by an increase in the value in the open position. Moreover, in such a situation, OCC will systematically limit the margin credit granted to the lesser of a multiple of the daily trading volume or the ''delta equivalent position''[11] for the particular common stock, taking into account the hedging position.[12] OCC believes that this policy will further encourage clearing members to deposit margin collateral that hedges their related open positions and is in line with the valuation methods within STANS. This policy will also facilitate OCC's management of its and its participants' credit exposure[13] as well as the liquidation of a clearing member's portfolio should the need arise.

Other Proposed Changes

OCC is also proposing to make certain clarifying changes in order to accommodate the adoption of the Interpretation into its Rules. Primarily, OCC proposes to add language to OCC Rule 604, Interpretation and Policy .14, to clarify that such Interpretation and Policy concerns OCC's authority to not give value to certain margin deposits for all clearing members (whereas the Interpretation applies to particular clearing member(s)). In addition, OCC

a particular clearing member has three accounts each holding 2-days volume of a specific common stock, the clearing member check would identify that the member was holding six days of volume in aggregate. To mitigate this risk, an add-on charge equal to the market value of four days of volume would be applied to all accounts holding that security on a pro-rata basis.

[9] This standard is based on the provisions of OCC Rule 215(a)(5).

[10] OCC believes that by providing such information clearing members will be better able to adjust their margin deposits at OCC to conform to the proposed rule change once it is approved.

[11] The ''delta equivalent position'' is the equivalent number of underlying shares represented by the aggregation of cleared products on that same underlying instrument. This value is calculated using the ''delta'' of the option or futures contract, which is the ratio between the theoretical change in the price of the options or futures contract to the corresponding change in the price of an underlying asset. Thus, delta measures the sensitivity of an options or futures contract price to changes in the price of the underlying asset. For example, a delta of +0.7 means that for every $1 increase in the price of the underlying stock, the price of a call option will increase by $0.70. Delta for an option or future can be expressed in shares of the underlying asset. For example, a standard put option with a delta of −.45 would have a delta of −45 shares, because the unit of trading is 100 shares.

[12] Assume, for example, an average daily trade volume of 250 shares, a threshold of 2 times the average daily trade volume, and a delta of −300 shares for the options on a particular security in a particular account. A position of 700 shares that did not hedge any short options or futures would receive credit for only 500 shares (*i.e.,* 2 times the average daily trade volume). If the net long position in the account, when combined with the delta of short option and futures position, were only 400, credit would be given for the entire 700 shares since the delta equivalent position is below the 500 share threshold. However, if the option delta were +300, the net long position would be 1000, and credit would only be given for 500 shares because the delta equivalent position would exceed the 500 share threshold.

[13] OCC also believes that this policy is consistent with proposed Rule 17Ad–22(e)(5). *See* Fn.6, supra.

proposes to remove language from OCC Rule 604, Interpretation and Policy .14, to improve readability as well as to remove ''factors'' concerning number of shares and affiliates since OCC's authority with respect to such factors will be more clearly described in the Interpretation. Finally, OCC proposes to renumber the Interpretations and Policies of Rule 604 in order to accommodate the adoption of the Interpretation.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [14] because it will assure the safeguarding of securities and funds which are in the custody and control of OCC. In addition, the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible. OCC believes that the proposed changes to its margin policy, as described above, will reduce the risk that clearing member margin assets would be insufficient should OCC need to use such assets to close-out positions of a defaulted clearing member. For the same reasons, the proposed rule change will promote confidence that OCC will be able to timely meet its settlement obligations because the proposed rule change will diminish the likelihood a large percentage of a defaulting clearing member's margin assets would not be available to OCC in the event of a clearing member default. The proposed rule change is not inconsistent with any existing OCC By-Laws or Rules, including those proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC believes that the proposed rule change would impose a burden on competition, and that such burden is appropriate in furtherance of the purposes of the Act.[15] As state [sic] above, the proposed rule change will affect the composition of certain clearing members' margin deposits. Clearing members may be required to modify their business practices and potentially incur costs in doing so. However, the proposed rule change will not place a significant burden on clearing members, will better assure the safeguarding of securities and funds in OCC's custody and control and promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible. By implementing the proposed rule change, it is less likely OCC will experience negative consequences due to exposure to a concentrated position of common stock deposited as margin by any clearing member as well as due to any wrong-way risk presented by a clearing member default. Accordingly, the proposed rule change contributes to the goal of OCC's financial stability in the event of clearing member default.

Moreover, and after implementation of the proposed rule change, OCC will still accept a large variety of common stocks as margin collateral, and no clearing member has indicated to OCC that it will have difficulty satisfying its margin requirement(s) once OCC implements the proposed rule change. Therefore, OCC believes that any burden on competition imposed by the proposed rule change is appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–14 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–OCC–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 the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (*http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_14.pdf*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–14 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18430 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(I).

[16] OCC also filed the proposed rule change as an advance notice under Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010. *See supra* note 3.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32718; File No. SR–OCC–2014–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Apply Enhanced Post-Trade Price Reasonableness Checks on Confirmed Trades in Standardized Options and Futures Options To Increase the Likelihood That Erroneous Trades Will Be Identified and Voided

July 30, 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 July 21, 2014, The Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change will implement price reasonableness checks in connection with the reporting of confirmed trades in standardized options and futures options to OCC by an Exchange. The proposed rule change will promote OCC's ability to protect itself and clearing members from the negative effects of clearing trades in standardized options and futures options that may contain erroneous premium information.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC is proposing to add an interpretation and policy concerning its administration of existing Article VI, Section 7(c) of the By-Laws and to implement price reasonableness checks in connection with the reporting of confirmed trades in standardized options and futures options to OCC by an Exchange under Article VI, Section 7 and Rule 401. Article VI, Section 7(c) provides that an Exchange may instruct OCC to disregard a confirmed trade previously reported to OCC for clearance and settlement under certain circumstances.[3] One such circumstance is a determination that ''new or revised trade information was required to properly clear the transaction.'' To promote OCC's ability to protect itself and clearing members from the negative effects of clearing trades in standardized options and futures options that may contain erroneous premium information, OCC would apply to accepted trades a premium price threshold triggering further scrutiny of trades that exceed it.

Background

The Board of Directors and Risk Committee have been evaluating risk controls with respect to trades priced significantly away from current market prices and the risks they present to OCC.[4] OCC anticipates the proposed price reasonableness review process would be put in place while it also develops other post-trade risk controls for potential implementation.

Post-Trade Price Validation Process

Earlier this year, a trade data entry parameter in OCC's systems that does not allow OCC to accept a trade having a premium price of more than $9,999.99 per contract prevented OCC from accepting erroneous trades that resulted from a trading algorithm error of a customer of a clearing member. If the systems parameter had not prevented OCC from accepting the trades, the settlement obligation for the clearing member for these trades alone could have exceeded $800 million. This amount would have been in addition to any other settlement obligation of the clearing member.

In light of the incident, and to promote the protection of OCC and clearing members from erroneous trades, OCC's Risk Committee directed OCC to perform an analysis of whether OCC should implement procedures regarding a reasonableness review for premium prices at some threshold level less than the current systems parameter of $9,999.99 per contract. The parameter will also remain in place, however. OCC reviewed standardized option and futures option trade submissions from all Exchanges for a period of 141 business days from December 2, 2013 through June 24, 2014. Based on analysis of the data, OCC determined that it is appropriate to set a premium price limit of $2,000 per contract because that premium threshold protects OCC and clearing members from erroneous trades that have the potential to cause significant settlement obligations while simultaneously not applying the post-trade price reasonableness check review to a material number of trades that may be valid. Of the nearly 179 million trades that OCC analyzed, only 30 would have triggered a price reasonableness check for exceeding the proposed $2000 threshold.

Under the proposed process, receipt of a trade that exceeds the premium price limit would generate an automatic notice to alert OCC staff. After being accepted, the trade would be referred by OCC to the reporting Exchange for evaluation under the obvious error or other applicable rules of the Exchange. OCC estimates the trade identification and referral process should take less than an hour from initiation by OCC to full resolution by a reporting Exchange. While a trade is involved in the post-trade reasonableness check process, OCC would not report the position to clearing members or further process the trade. In the event the Exchange determines that the trade is good, it would notify OCC and the trade would continue through OCC's clearing and reporting processes using the originally reported price. If the Exchange determines that the trade was in error or erroneously priced such that, as provided in Article VI, Section 7(c), new or revised trade information is required to properly clear the transaction, OCC expects the Exchange would instruct OCC to disregard or ''bust'' the trade. However, in the event the Exchange does not exercise its authority under its

[3] *See* Article VI, Section 7(c); *see also* Exchange Act Release No. 46734 (October 28, 2002), 67 FR 67229 (November 4, 2002)(SR–OCC–2002–18) (approving amendments to OCC's By-Laws and Rules supporting the transition to near real-time reporting of matched trade information, including amendments to Article VI, Section 7 to allow instructions to OCC under certain conditions to disregard a matched trade).

[4] *See e.g.,* OCC Press Release, OCC and The U.S. Options Exchanges Adopt New Pre- and Post-Trade Risk Control Principles (May 21, 2014), *http://www.theocc.com/about/press/releases/2014/05_21.jsp*. OCC intends that these principles will be the subject of additional proposed rule changes.

own rules to instruct OCC to disregard the trade pursuant to Article VI, Section 7(c), the trade would continue through OCC's clearing and reporting process using the originally reported price.

OCC will provide notice to market participants of the post-trade price reasonableness check process, and the process would be implemented upon regulatory approval. OCC believes this implementation timing is appropriate because OCC's Board instructed OCC to implement the post-trade risk control as quickly as practicable. OCC's decision to implement the process for price reasonableness checks and to set the premium price limit at the $2,000 level also necessitates related systems changes and conforming changes to certain policies and procedures. Conforming changes to affected policies and procedures would include amendment of OCC's trade and position processing policy. Certain policies and procedures would also be updated to reflect aspects of the process for price reasonableness checks related to governance processes at OCC that are described in more detail below.

Ongoing Oversight of the Proposed Post-Trade Price Validation Process

The premium level at which the price reasonableness review process is triggered would be subject to adjustment or suspension under certain conditions. OCC would review the level on a quarterly basis for continued adequacy. In the event the maximum premium price traded over the prior quarter declines by a predetermined dollar amount or the average number of valid trades referred to reporting Exchanges exceeds a predetermined number of occurrences per quarter, OCC would be authorized to adjust the applicable premium level.[5] Establishment of such level and any modification thereof that may be made from time to time would be required to be reported to the Risk Committee. In addition, the Executive Chairman, President or Chief Operating Officer would be authorized to temporarily summarily suspend the then-applicable premium limit in the event that in excess of a predetermined number of valid trades are being referred to the reporting Exchanges for review; provided, however, that when the causes responsible for the temporary suspension are resolved the approved premium threshold would be reinstated. The Risk Committee, along with the Chief Risk and Compliance Officers, would be advised of any such suspension. OCC believes these processes help ensure an appropriate level of management and Risk Committee oversight for the continued effectiveness of the proposed price reasonableness review process.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''),[6] and the rules and regulations thereunder, including Rule 17Ad–22(d)(4),[7] because, by helping OCC protect itself and clearing members from confirmed trades in standardized options and futures options for which new or revised trade information may be required to properly clear the transaction, the proposed modifications would promote the prompt and accurate clearance and settlement of securities transactions, protect investors and the public interest and ensure that OCC has policies and procedures designed to ''identify sources of operational risk and minimize those risks through the development of appropriate systems, controls, and procedures.'' The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended. OCC is notifying clearing members of the proposed rule change via an Information Memo.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.[8] The proposed post-trade price reasonableness review process that OCC would administer pursuant to Article VI, Section 7(c) would help identify erroneous trades reported to OCC by an Exchange for which clearing members would otherwise be responsible. OCC believes the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed premium price limit per contract and process for identifying standardized option and futures option transactions for review by reporting Exchanges would be applied uniformly to such transactions, regardless of the identity of the submitting Exchange or the clearing member for whose account the trade was reported.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to clearing agencies, and would not impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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-comments@sec.gov.* Please include File Number SR–OCC–2014–16 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–OCC–2014–16. 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

[5] Any such action by OCC regarding the premium level would also be subject to the regulatory process of filing a proposed rule change with the Commission.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(d)(4).

[8] 15 U.S.C. 78q–1(b)(3)(I).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_16.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–16 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18432 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72705; File No. SR–MSRB–2014–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rule G–3, on Professional Qualification Requirements, Regarding Continuing Education Requirements

July 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of proposed amendments to Rule G–3, on professional qualification requirements (the ''proposed rule change'').[3] The effective date of the proposed rule change will be January 1, 2015.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to improve the Firm Element continuing education requirement of MSRB Rule G–3(h)(ii) by requiring brokers, dealers and municipal securities dealers (collectively, ''dealers'') to conduct annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities. While the MSRB has intended, from the inception of the rule, that dealers consider the scope of their municipal securities activities and regulatory developments in preparing their annual training plan, the rule does not specifically require dealers to train registered persons on municipal securities issues. The proposed rule change would require such training for a select group of registered persons who are regularly engaged in or supervise municipal securities activities.

[3] Certain portions of Rule G–3, including the title, are the subject of proposed amendments that are currently pending SEC approval and will not be effective until 60 days following the date of such approval. *See* SEC Release No. 34–72425 (Jun. 18, 2014); 79 FR 35829 (Jun. 24, 2014); File No. SR–MSRB–2014–04.

Background

In 1993, a self-regulatory organization (''SRO'') task force[4] was created to study and develop recommendations regarding continuing education in the securities industry. The task force issued a report calling for a formal, two-part continuing education program consisting of: (i) A Regulatory Element requiring securities industry professionals to obtain periodic and uniform training in regulatory matters, and (ii) a Firm Element requiring firms to provide ongoing training to employees to ensure they have up to date knowledge of job and securities product-related subjects.

On February 8, 1995 the SEC approved SRO rule changes based on the task force's recommendations.[5] In approving the SRO rule changes, the SEC stated that these SROs ''may require their members, either individually or as part of a group, to provide specific training in any areas the SROs deem necessary.''[6] The SEC added that ''[a]s the program evolves, it is expected that educational standards will be defined by the SROs for products and services where heightened regulatory concerns exist.''[7] Since approval of the continuing education rules, SROs have amended their continuing education rules as industry and market practices evolved.

Current Firm Element Continuing Education Requirement

Currently, MSRB Rule G–3(h)(ii)(B)(1) requires dealers to maintain a continuing and current education program for their covered registered persons to enhance their securities knowledge, skill and professionalism. Under Rule G–3(h)(ii)(A), covered registered persons are limited to those registered representatives who have direct contact with customers in the conduct of a dealer's securities sales, trading and investment banking

[4] The task force included representatives from six SROs, including the MSRB, and industry representatives.

[5] *See* SEC Release No. 34–35341 (Feb. 8, 1995), 60 FR 8426 (Feb. 14, 1995), File No. SR–MSRB–94–17 (approving MSRB Rule G–3(h), on continuing education requirements).

[6] *Id.*

[7] *Id.*

activities, and to their immediate supervisors.

At least annually, dealers are required to evaluate and prioritize their training needs (commonly known and referred to herein as a ''needs analysis'') and develop written training plans for their covered registered persons. The needs analysis should take into consideration the firm's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.

However, while the current rule requires dealers to evaluate their training needs annually, it does not require dealers to conduct municipal securities training for their covered registered persons, regardless of the extent to which they engage in municipal securities activities. The proposed rule change addresses concerns that municipal securities professionals may not be receiving adequate training because dealers may not be placing a sufficiently high priority on municipal securities in their needs analysis.

The MSRB understands that this deficiency may be the result of municipal securities topics competing with training on other products, and the perception that municipal securities are a relatively safe investment option in comparison to other investment products. However, despite competition for dealer training resources and the possible perception that municipal securities are low risk products, the MSRB believes that the municipal securities market possesses unique attributes that require particularized education and training. In addition, dealers engaging in municipal securities activities are subject to, and as a result, must be familiar with MSRB rules that are distinct from the rules of other SROs and that are tailored to address the particularities of the municipal securities market.

Since Rule G–3(h) does not require any training on municipal securities, registered persons regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities may receive insufficient, or no, training on municipal securities, particularly if such persons are employed by firms that offer a broad range of financial products. The MSRB believes that requiring dealers to conduct annual municipal securities training for registered persons who are regularly engaged in or who regularly supervise municipal securities activities would ensure the delivery of municipal securities content to those individuals who are active in the municipal securities market, while allowing dealers sufficient flexibility in delivering such content. Under the proposed rule change, dealers would continue to determine the nature of the training and would have the discretion as to content based on the specific type of municipal securities activities conducted by the firm and the individual registered person.

In addition to mandating annual training, the proposed rule change would also expand the definition of covered registered persons who are required to participate in such training to include registered persons who engage in a variety of municipal securities activities, regardless of whether such activities are customer-facing. Currently, only registered representatives who have direct contact with customers in securities sales, trading and investment banking activities and their immediate supervisors are required to participate in Firm Element continuing education.

Request for Comment on Proposed Changes to the Firm Element Requirement

On December 13, 2013, the MSRB published a request for public comment on a draft of the proposed rule change.[8] In response, the MSRB received eleven comment letters.[9] In formulating the proposed rule change, the Board reviewed all comments submitted in connection with the proposal and considered the suggestions and issues they raised. The MSRB also considered the alternatives suggested by commenters and amended the proposed rule change in response to the comments.

For example, a number of commenters objected to the initial proposal to extend the Firm Element training to all persons associated with dealers who primarily engage in municipal securities activities. In response to the comments, as more fully discussed below, the MSRB modified the proposal to require only registered persons who are regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities to participate in the training.

Training of Registered Persons Who are Not Customer-Facing

Several commenters expressed concerns about requiring registered persons who are not customer-facing but perform middle or back-office functions to participate in continuing education. In this regard, the proposed rule change sets no new precedent. Both the Financial Industry Regulatory Authority (''FINRA'') and the Chicago Board Options Exchange (''CBOE'') require certain registered personnel who are not customer-facing to fulfill continuing education requirements.[10] In approving FINRA's operations professional classification, the SEC stated, ''[g]iven the growing complexity of the industry, and the importance of the services provided by the back-office personnel, the Commission believes that FINRA's proposal to . . . require members to provide Operations Professionals with continuing education . . . will help to address regulatory gaps in this area.'' [11]

Requiring training for registered representatives and principals who regularly engage in or supervise municipal securities activities will provide reasonable assurance that individuals performing important functions in a dealer's middle and back-office understand their professional responsibilities and applicable regulations, as well as the importance of identifying and escalating indications of possible wrongdoing. As a baseline, dealers that are FINRA members must deliver Firm Element training to certain customer-facing and back-office registered persons. The MSRB believes that the proposed rule change would result in training that would be appropriately targeted to registered representatives who regularly engage in municipal securities activities, such as sales, trading, investment banking, and processing and clearance of municipal securities transactions, as well as those

[8] *See* MSRB Notice 2013–22 (Dec. 13, 2013) (''December Notice'').

[9] Letters were received from Bond Dealers of America (''BDA''), Diamant Investment Corporation (''Diamant''), Financial Services Institute (''FSI''), Investment Company Institute (''ICI''), MetLife Securities, Inc. (''MetLife''), National Society of Compliance Professionals (''NSCP''), Romano Wealth Management (''Romano''), RW Smith & Associates, Inc. (''RW Smith''), Securities Industry and Financial Markets Association (''SIFMA''), Securities Industry Council on Continuing Education (''SICCE''), and Wulff, Hansen & Co (''Wulff''). The comment letters are discussed in more detail below.

[10] FINRA Rule 1250(a)(5) requires operation professionals (Series 99) to complete continuing education, and CBOE Rule 9.3A(c) requires proprietary traders (Series 56) to complete continuing education requirements.

[11] SEC Release No. 34–64687 (Jun. 16, 2011), 76 FR 36586 (Jun. 22, 2011), File No. SR–FINRA–2011–013. Similarly, regarding CBOE's Proprietary Trader exam (Series 56), the Commission stated, ''Though proprietary traders with a Series 56 registration do not interact with the public, the Exchange believes this requirement is appropriate as it ensures these registered persons continue to enhance their securities knowledge, skill and professionalism. . . . Thus, the Exchange believes it is appropriate that these individuals also complete the Firm Element.'' SEC Release No. 34–70027 (Jul. 23, 2013), 78 FR 45584 (Jul. 29, 2013), File No. SR–CBOE–2013–076.

principals who regularly supervise such activity. Furthermore, the MSRB believes that the proposed rule change would not pose an undue burden on dealers because most registered persons already participate in some form of Firm Element training.

Flexibility To Determine Who is Regularly Engaged in Municipal Securities Activities

Under the proposed rule change, not all registered persons would be required to participate in a dealer's Firm Element training. Rather, dealers would be required to train only those registered persons engaged in or supervising municipal securities activities on a regular basis. Dealers would determine which of their registered persons regularly engage in or supervise municipal securities activities, and they would not be required to provide Firm Element continuing education for those individuals who engage in municipal securities activities on an infrequent or *de minimis* basis.

Dealers would be required, under Rule G–3(h)(ii)(B)(1), to document, in writing, their method for determining whether an individual, or class of individuals, regularly engages in or regularly supervises municipal securities activities as part of their needs analysis. Dealers would have the flexibility to determine who participates in such training, so long as they have a reasonable basis for determining which registered persons regularly engage in or supervise municipal securities activities.

A dealer could, for example, determine that registered representatives are ''regularly engaged in municipal securities activities'' if such individuals are engaged in sales of municipal securities to customers and derived more than a certain percent of their gross sales in the preceding year from municipal securities transactions. Or, dealers might determine that registered representatives who participate in a threshold level of municipal securities trades, or are part of a particular group within the firm (*e.g.,* a dealer's public finance group) are regularly engaged in municipal securities activities.

Flexibility Regarding Training Content

As is currently the case, dealers also would have the flexibility to determine the content of the training. While some dealers may elect to develop original content, others may utilize existing content available in the marketplace. Dealers would be able to access and include MSRB webinars as part of the training. Conferences and other municipal securities training offered by trade associations and other market participants could also be utilized. Given the variety of sources for municipal securities training content, the MSRB believes the proposed rule change would impose little additional burden on dealers.

Technical Amendments

Finally, the proposed rule change includes certain technical amendments to conform other portions of Rule G–3 to the proposed rule change. First, the proposed rule change would amend Rule G–3(h)(ii)(C) to clarify that covered registered persons must participate in the Firm Element training as required by the dealer.[12] Second, Rule G–3(h)(ii)(B)(1) would be amended to clarify that, under the proposed rule change, supervisory training would be required for any registered principal who regularly supervises municipal securities activities.[13] Third, Rule G–3(h)(ii)(B)(2) would be amended to explicitly require that a firm's training program include training on the municipal securities products, services and strategies offered by the dealer.

Effective Date

The MSRB is proposing January 1, 2015 as the effective date for the proposed rule change to provide dealers with adequate time to include the training requirements of the proposed rule change into their annual needs analysis and written training plan developed after such date.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act,[14] which provides that the MSRB's rules shall:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless . . . such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.

Additionally, the MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[15] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

Requiring Firm Element continuing education for registered persons who regularly engage in municipal securities activities and supervisors who regularly supervise municipal securities activities is essential for the protection of investors, municipal entities and the public interest because such education will help ensure that individuals regularly participating in the municipal securities market will stay abreast of new municipal securities features, products and risks; changes to applicable regulatory regimes; and innovations in market practices. As SIFMA noted in a recent comment letter to the MSRB regarding a rule proposal on professional qualifications for municipal advisors, ''[c]ontinuing education and day to day training are critical parts of the core training of a firm's employees. Regulations change frequently, and firms need to ensure their associated persons are appropriately informed about such changes.'' [16] The MSRB agrees with SIFMA's assertion that continuing education is necessary to remain current on regulatory developments and believes the proposed rule change will accomplish that objective.

[12] Rule G–3(h)(ii)(C) currently states: ''Participation in the Firm Element—Covered registered persons included in a broker, dealer or municipal securities dealer's plan must [take all appropriate and reasonable steps to] participate in continuing education.'' (emphasis added) Proposed revised Rule G–3(h)(ii)(C) would remove the text in brackets to ensure all covered registered persons participate in Firm Element continuing education annually.

[13] Rule G–3(h)(ii)(B)(1) currently states ''If a broker, dealer or municipal securities dealer's analysis determines a need for supervisory training for persons with supervisory responsibility, such training must be included in the broker, dealer or municipal securities dealer's training plan.'' The MSRB proposes to eliminate this provision because, under the proposed rule change, registered principals who regularly supervise municipal securities activity would be required to participate in Firm Element training annually.

[14] 15 U.S.C. 78o–4(b)(2)(A).

[15] 15 U.S.C. 78o–4(b)(2)(C).

[16] *See* SIFMA Letter dated May 16, 2014 in response to MSRB Notice 2014–08 (Mar. 17, 2014).

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers who engage in municipal securities activities. The proposed rule change does nothing more than specify that, in developing an annual training plan based on the firm's needs analysis, the dealer must include municipal securities training for those registered individuals who are regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities. The proposed rule change does not set forth any quantitative or qualitative requirements regarding the training that must be provided. Rather, it continues to grant dealers flexibility to develop Firm Element training based on the nature of their business activities. Several commenters indicated that the proposed rule change would likely improve the municipal securities market and its efficient operation, and that potential burdens created by the proposed rule change are to be likely outweighed by the benefits.

The Board has historically given careful consideration to the costs and benefits of its new and amended rules. The Board recently adopted a policy to more formally integrate economic analysis into its rulemaking process. According to the policy, the Board should, prior to proceeding with a rulemaking, evaluate the need for the rule and determine whether the rule as drafted will, in its judgment, meet that need. The Board also should identify, prior to proceeding with a rulemaking, data and other information it would need in order to make an informed judgment about the potential economic consequences of the rule. In addition, the Board should make a preliminary identification of both relevant baselines and reasonable alternatives to the proposed rule. Finally, the Board should consider the potential benefits and costs of the proposed rule and the reasonable alternative regulatory approaches.

The Need for the Proposed Rule Change

The need for the proposed rule change arises from concerns that municipal securities professionals may not be receiving adequate training on municipal securities. The structure of the current rule allows for dealers to evaluate and prioritize their firm-level training needs, at least annually, through a needs analysis. The current rule does not require dealers to conduct municipal securities training for their covered registered persons, regardless of the extent to which they engage in municipal securities activities. Absent a requirement, some dealers may not be placing a sufficiently high priority on municipal securities in their needs analysis, particularly when municipal securities topics are competing with training on other topics. This situation may arise, for example, in firms with a broad scope of business activities with only a small subset of employees engaged on a regular basis with municipal securities activities. In evaluating training needs at these firms, municipal securities training can become a low priority at the firm level even though such training is important to the subset of employees who are registered individuals regularly engaged in municipal securities activities. The proposed rule change addresses the need to ensure adequate training for municipal securities professionals by requiring focused training for registered representatives who engage regularly in municipal securities activities.

Relevant Baselines

To evaluate the potential impact of the proposed rule change, a baseline, or baselines, must be established as a point of reference. The analysis proceeds by comparing the expected state after the proposed rule change is approved to the baseline state prior to the rule taking effect. The economic impact of the proposed rule change is measured as the difference between these two states.

One baseline that can be used to evaluate the impact of the proposed rule change is the current structure of Rule G–3 which requires Firm Element education programs for a firm's covered registered persons, *i.e.,* those who are registered representatives who have direct contact with customers in the conduct of a dealer's securities sales, trading and investment banking activity, and their immediate supervisors.

For the subset of municipal securities professionals who are associated persons of FINRA members, a baseline to evaluate the impact of the proposed rule change is the current FINRA requirements for Firm Element training applied to certain customer-facing and back-office registered persons.

Identifying and Evaluating Reasonable Alternative Regulatory Approaches

One alternative to adopting the proposed rule change would be for the MSRB not to engage in additional rulemaking, and thus, not require dealers to conduct municipal securities training for their covered registered persons, regardless of the extent to which they are engaged in municipal securities activities. In the absence of such a requirement, dealers would evaluate and prioritize their training needs which may not include training regarding municipal securities even if registered representatives and principals are regularly engaged in or supervise such activities.

Various alternatives were suggested by commenters and have been addressed herein. Some of the suggested alternative regulatory approaches have been incorporated into the proposed rule change. For example, a number of commenters raised concerns with the initial proposal to extend the Firm Element training to all persons associated with dealers who primarily engage in municipal securities activities. In response to the comments, the MSRB modified the proposal to require only registered persons regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities to participate in the training.

Another alternative suggested by commenters was to eliminate a proposed one-hour continuing education requirement. After carefully considering the views of the commenters, the MSRB has eliminated the one-hour requirement in the proposed rule change.

Assessing the Benefits and Costs

The purpose of the proposed rule change is to enhance the municipal securities knowledge of those registered individuals who regularly engage in or regularly supervise municipal securities activities. Relative to the baseline of existing Rule G–3, the proposed rule change would require dealers to conduct municipal securities training annually for their registered representatives and principals who are regularly engaged in, or supervise, such activities.

At the outset, the MSRB notes it is currently unable to quantify the economic effects of the proposed rule change because the information necessary to provide reasonable estimates is not available.

The likely benefit of the proposed rule change is that it will ensure that registered individuals who are regularly engaged in or regularly supervise municipal securities activities will receive training on municipal securities topics for the purpose of keeping them up to date, and to enhance their knowledge, skill and professionalism. Because the municipal securities market is complex and has unique institutional features, it is important for these individuals that some portion of their

required annual training include topics specific to municipal securities.

The proposed rule change includes training for individuals performing important functions pertaining to municipal securities transactions in a dealer's middle or back-office. The benefit of requiring training for these individuals is that the training will provide reasonable assurance that these individuals will understand their professional responsibilities and applicable regulations, as well as the importance of identifying and escalating matters that may indicate possible violations of MSRB rules or the federal securities laws.

Relative to the baseline of existing Rule G–3, the likely benefit of the proposed rule change will accrue primarily to municipal securities professionals employed by firms engaged in many activities, where municipal securities activities are only a portion of the business. Individuals in such firms may not be receiving training on municipal securities because the Firm Element needs analysis, when evaluated across a broad scope of a firm's activities, may result in training for other areas that are deemed a higher priority. For firms specializing in municipal securities activities, the proposed rule change will likely produce no additional benefit, except for training of registered back-office personnel, since the Firm Element needs analysis performed by these firms under existing Rule G–3 will likely result in specialized training on municipal securities topics.

Relative to the baseline of existing Rule G–3, the proposed rule change would likely produce additional compliance costs for certain firms, primarily for firms engaged in many activities where municipal securities activities are only a portion of the business. These firms would incur costs associated with determining and documenting which of their covered employees are regularly engaged in, or regularly supervise municipal securities activities. To address this cost, the proposed rule change allows dealers flexibility in determining which individual employees meet the criteria of regularly engaging in or supervising these activities.

It also would be expected that firms will incur costs in developing instructional materials specifically addressing topics related to municipal securities. Many of the comment letters addressed concerns about the cost of producing these instructional materials. However, there are less costly alternatives to developing original instructional materials. The training requirement can be satisfied by attending professional conferences or webinars addressing topics related to municipal securities. Some of these webinars are available without charge and may be able to satisfy all or a portion of a dealer's training needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In response to the December Notice, the MSRB received eleven comment letters. BDA and FSI expressed support for requiring municipal securities training as part of the Firm Element training. BDA commented that requiring training of registered representatives regularly engaged in municipal securities activities ''would also help keep these professionals abreast of emerging regulatory developments and industry trends, without having to include additional municipal securities content on such general securities qualification examinations or impose a specific examination requirements [sic] for registered representatives engaged in municipal securities activities.'' FSI stated that it believed the proposed rule change would effectively target registered representatives regularly engaged in municipal securities activities without ''imposing additional continuing education requirements on associated persons of a broker-dealer firms [sic] for whom this additional training would be unnecessary.'' FSI further commented that the proposal ''provides a measured and balanced approach to achieving MSRB's goals to increase municipal securities training while ensuring that unnecessary additional regulatory requirements are avoided.''

One-Hour Training Requirement

Some commenters objected to the proposed one-hour continuing education requirement included in the draft rule language proposed in the December Notice, arguing that it improperly focused on the quantitative aspect of training instead of the qualitative nature of the training. Several commenters believed that the one-hour requirement was too subjective and did not adequately consider the quality of the training being delivered. According to SIFMA, ''[f]ocusing on the quantity (i.e., time element) versus the quality of the training provided is misguided.'' Wulff expressed a similar sentiment, stating ''[t]he specified one-hour minimum will also complicate the process of identifying and proving a violation of the rule by firms whose programs are deemed inadequate by their examiners but meet the quantitative minimum set forth in the rule.'' NSCP noted that ''[c]urrently, there are no prescriptive rules that we are aware of that mandate specific time on any aspect of securities industry CE training.'' NSCP added that ''mandating prescriptive minimum hourly training requirements is inconsistent with the industry-wide goal of designing CE training appropriately addressing each firm's needs, based upon a self-managed analysis.''

After carefully considering the views of the commenters and the objectives of the proposed rule change, the MSRB eliminated the one-hour requirement in the proposed rule change. One of the core objectives of the proposed rule change is to ensure that registered individuals regularly engaged in municipal securities activities take part in municipal securities continuing education. The MSRB believes that the proposed rule change can achieve the objective of enhancing an individual's municipal securities knowledge without setting time parameters for the training.

Persons Covered by the Training Requirement

Some commenters expressed concern over the MSRB's inclusion of the phrase ''primarily engaged in municipal securities activities'' and the use of the term ''associated person'' in the December Notice. These commenters believed that the phrase ''primarily engaged'' did not provide dealers with enough guidance to determine who at their firm would meet such a standard. Furthermore, these commenters stated that they would have difficulty determining which persons at their firm would now be considered an ''associated person.'' ICI commented that ''[i]dentifying which of its associated persons are 'primarily engaged in municipal securities activities' may be a relatively easy exercise for municipal securities dealers whose primary business consists of the offer and sale of municipal securities other than municipal fund securities. In the case of our members and other dealers whose municipal securities activities are limited to the offer and sale of municipal fund securities, such as 529 plan securities, this will be an incredibly difficult exercise.'' Additionally, commenters raised concerns over expanding the continuing education requirement to unregistered associated persons, suggesting it was a departure from the current regulatory standards set by other regulators. NSCP noted that, ''this new requirement [requiring non-registered personnel to complete continuing education training]

represents a departure from current industry-wide requirements, *e.g.,* FINRA Rule 1250 prescribes requirements for registered persons only.''

While the December Notice proposed a training requirement beyond registered representatives, it simultaneously narrowed the category of covered persons to those primarily engaged in municipal securities activities. The Board's rationale for initially proposing to expand the training requirement to unregistered persons who engage in municipal securities activities in a dealer's middle or back-office was to address cases where such individuals may not have been receiving continuing education, and yet were charged with adhering to requirements prescribed by the MSRB's uniform practice rules. Nevertheless, after considering the concerns of commenters and the potential impact of expanding the coverage of the training requirement, the Board decided that its objective of ensuring proper levels of continuing education for those individuals regularly participating in the municipal securities market could be accomplished by requiring training for registered representatives and principals who regularly engage in or supervise municipal securities activities. The MSRB believes that training registered persons who regularly supervise municipal securities activities will improve their ability to supervise registered and non-registered persons who engage in activities covered by MSRB rules.

Additional Compliance Burden and Duplicative Requirements

Several commenters stated that the proposed rule change would be duplicative and impose additional and unjustified compliance burdens. BDA commented that ''with any new or enhanced regulatory requirement, there are associated compliance costs borne by the staff at our member firms.'' NSCP raised concerns about compliance professionals becoming ''bogged down by administrative functions associated with such a prescriptive rule.'' Similarly, Diamant commented that ''. . .forcing additional education requirements simply places another layer of regulatory burden on top of the existing education requirement.'' The MSRB maintains that the Firm Element requirement is not a new requirement as described by commenters. Dealers have been delivering continuing education that may have included municipal securities content since the continuing education rules were first established in 1995. The proposed rule change would simply add the requirement that some training on municipal securities be provided to select registered persons. The MSRB concedes that this change may require some dealers to devote resources to evaluating their training programs and including content on municipal securities activities for registered representatives and principals that regularly engage in or supervise municipal securities activities.

Dealers, however, will have the ability to create and deliver content in the most convenient and effective manner based on their own business model. To the extent technology is available and affordable it may be used to assist dealers in delivering content to their employees, thereby mitigating the impact of the proposed rule change. The MSRB understands that many dealers already provide substantial training for their employees, and that many firms do not limit the training to their customer-facing registered representatives. The goal of the proposed rule change is to ensure that all dealers provide at least some municipal securities training for those registered persons who regularly engage in municipal securities activities and to those registered persons who regularly supervise such activity. The Board believes this approach is consistent with the investors' expectation of financial professionals and the firms with which they do business.

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 of 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2014–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2014–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2014–05 and should be submitted on or before August 26, 2014.

For the Commission, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18380 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72703; File No. SR–NYSEArca–2014–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca, Inc.'s Rules by Revising the Order of Priority of Bids and Offers When Executing Orders in Open Outcry

July 29, 2014.

On January 15, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the order of priority of bids and offers when executing orders in open outcry. The proposed rule change was published for comment in the **Federal Register** on February 3, 2014.[3] On March 18, 2014, the Commission extended to May 2, 2014 the period in which to approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.[4] The Commission received ten comment letters from seven commenters regarding the proposal,[5] as well as a response to the comment letters from NYSE Arca.[6] On April 29, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On May 2, 2014, the Commission noticed Amendment No. 1 and instituted proceedings to determine whether to approve or disapprove the proposed rule change under Section 19(b)(2)(B) of the Act [8] in an order published in the **Federal Register** on May 8, 2014.[9] The Commission thereafter received no comment letters on the proposal, as modified by Amendment No. 1.

Section 19(b)(2) of the Act [10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the **Federal Register** publishes notice of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on February 3, 2014. August 2, 2014 is 180 days from that date, and October 1, 2014 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1, so that the Commission has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection with this proposed rule change, and NYSE Arca's response to these issues in its response letter.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates October 1, 2014, as the date by which the Commission must either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File Number SR–NYSEArca–2014–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18378 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71425 (January 28, 2014), 79 FR 6258 (''Notice'').

[4] *See* Securities Exchange Act Release No. 71733 (March 18, 2014), 79 FR 16072 (March 24, 2014).

[5] *See* Letter from Darren Story, dated January 29, 2014; Letter from Abraham Kohen, AK FE Consultants LLC, dated January 31, 2014; Letter from David Spack, Chief Compliance Officer, Casey Securities, LLC, dated February 3, 2014; Letter from Abraham Kohen, AK FE Consultants LLC, dated February 4, 2014; Letter from Angel Alvira, dated February 12, 2014; Letter from Donald Hart, dated February 12, 2014; Letter from Doug Patterson, Chief Compliance Officer, Cutler Group, LP, dated February 13, 2014; Letter from Donald Hart, dated February 18, 2014; Letter from Gerald D. O'Connell, Chief Regulatory Officer, Susquehanna International Group, LLP, dated March 14, 2014; and Letter from Darren Story, dated March 21, 2014. The comment letters are available in the public comment file for SR–NYSEArca–2014–04 at *http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml.*

[6] *See* Letter from Martha Redding, Chief Counsel, NYSE Euronext, dated April 4, 2014 (''NYSE Response Letter''). The NYSE Response Letter is available at *http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml.*

[7] Amendment No. 1 is available in the public comment file for SR–NYSEArca–2014–04 at *http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 72081 (May 2, 2014) 79 FR 26474 (''Order Instituting Proceedings'').

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72716; File No. SR–NASDAQ–2014–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of the Shares of the First Trust Emerging Markets Local Currency Bond ETF of First Trust Exchange-Traded Fund III

July 30, 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 July 18, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. On July 25, 2014, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust Emerging Markets Local Currency Bond ETF (the ''Fund'') of First Trust Exchange-Traded Fund III (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[4] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarifies that reverse repurchase agreements will not be used by the First Trust Emerging Markets Local Currency Bond ETF to enhance leverage.

[4] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see, e.g.,* Securities Exchange Act Release Nos. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR–NASDAQ–2012–147) (order approving listing and trading of First Trust High Yield Long/Short ETF); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares [5] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 9, 2008.[6] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[7] The Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Global Portfolios Ltd will serve as investment sub-adviser (''Sub-Adviser'') to the Fund and provide day-to-day portfolio management. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (''BBH'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is a broker-dealer, although each is affiliated with the Distributor, a broker-dealer. The Adviser and the Sub-Adviser have each implemented a fire wall with respect to their broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

First Trust Emerging Markets Local Currency Bond ETF

Principal Investments

The investment objective of the Fund will be to seek maximum total return and current income. Under normal market conditions,[9] the Fund will invest at least 80% of its net assets (including investment borrowings) in bonds, notes, bills, certificates of deposit, time deposits, commercial paper and loans issued by issuers in emerging market [10] countries (''Debt Instruments'') that are denominated in the local currency of the issuer. Debt Instruments will be issued or guaranteed (as applicable) by: (i) Foreign governments (which may be local foreign governments); (ii)

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (the ''Exemptive Relief''). In addition, the Commission has issued no-action relief, upon which the Trust may rely, pertaining to the Fund's ability to invest in derivatives notwithstanding certain representations in the application for the Exemptive Relief. *See* Commission No-Action Letter (December 6, 2012).

[7] *See* Post-Effective Amendment No. 10 to Registration Statement on Form N–1A for the Trust, dated July 8, 2014 (File Nos. 333–176976 and 811–22245). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] According to the Adviser and the Sub-Adviser, while there is no universally accepted definition of what constitutes an ''emerging market,'' in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Adviser and Sub-Adviser will look at a variety of commonly-used factors when determining whether a country is an ''emerging'' market. In general, the Adviser and Sub-Adviser will consider a country to be an emerging market if it is classified by the World Bank in the lower, lower middle or upper middle income designation for one of the past three years. This definition could be expanded or exceptions could be made depending on the evolution of market and economic conditions.

instrumentalities, agencies or other political subdivisions of foreign governments (which may be local foreign governments); (iii) central banks, sovereign entities, supranational issuers or development agencies; or (iv) entities or enterprises organized, owned, backed or sponsored by any of the entities set forth in the foregoing clauses (i)–(iii).[11] The Fund will invest in Debt Instruments issued by at least 13 non-affiliated issuers.

In implementing the Fund's investment strategy, the Sub-Adviser will seek to provide current income and enhance capital, while minimizing volatility. The Sub-Adviser will continually review fundamental economic and structural themes that impact long and medium term asset returns in emerging markets. The Sub-Adviser will also consider shorter term market drivers such as valuations, liquidity conditions and sentiment to determine the appropriate positioning of the Fund's investments. The Sub-Adviser will adjust the portfolio's country allocations, duration and individual security positioning to reflect the most attractive opportunities on a continuous basis.

The Fund's exposure to any single country generally will be limited to 20% of the Fund's net assets (although this percentage may change from time to time in response to economic events). The percentage of Fund assets invested in a specific region, country or issuer will change from time to time. The Fund intends, initially, to invest in Debt Instruments of issuers in the following countries: Brazil, Chile, Colombia, Hungary, Indonesia, Israel, Malaysia, Mexico, Nigeria, Peru, Philippines, Poland, Romania, Russia, South Africa, South Korea, Thailand, Turkey and Uruguay. This list may change as market developments occur and may include additional issuers. The Fund will invest only in Debt Instruments that, at the time of purchase, are performing, and not in default or distressed; however, the Debt Instruments in which the Fund invests may become non-performing, distressed or defaulted subsequent to purchase and the Fund may continue to hold such Debt Instruments. The Fund may invest in Debt Instruments of any credit quality,[12] including unrated securities, and with effective or final maturities of any length.

Liquidity will be a substantial factor in the Fund's security selection process.[13] Under normal market conditions, at least 80% of the Fund's net assets that are invested in Debt Instruments will be invested in Debt Instruments that are issued by issuers with outstanding debt of at least $200 million (or the foreign currency equivalent thereof).

The Fund's Investments in Derivative Instruments and Foreign Currencies

The Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. Under normal market conditions, no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. The Fund may invest in exchange-listed futures contracts,[14] exchange-listed options,[15] exchange-listed options on futures contracts, forward currency contracts, non-deliverable forward currency contracts and exchange-listed currency options.[16] Derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to, among other things, interest rates, currencies or currency exchange rates. The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.

The Fund will use derivative instruments primarily to hedge interest rate risk and actively manage interest rate exposure and, as described further below, to hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows or to preserve capital.[17] The Fund's investments in derivative instruments will not be used to seek to achieve a multiple or inverse multiple of an index.

The Fund will invest in foreign currencies, will invest in Debt Instruments denominated in foreign (non-U.S.) currencies and will receive revenues in foreign currencies. In addition, the Fund may engage in foreign currency transactions on a spot (cash) basis and, as indicated above, enter into forward currency contracts.[18] A forward currency contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions (*i.e.,* non-deliverable forward currency contracts) may also be settled in cash rather than the actual

[11] Debt Instruments include fixed rate, floating rate and index-linked debt obligations. In addition, as a point of clarification, Debt Instruments include inflation-linked bonds. Inflation-linked bonds are fixed income securities that are structured to provide protection against inflation. The value of the inflation-linked bond's principal or the interest income paid on the bond is adjusted to track changes in an official inflation measure. The value of inflation-linked bonds is expected to change in response to changes in real interest rates. Real interest rates are tied to the relationship between nominal interest rates and the rate of inflation. If nominal interest rates increase at a faster rate than inflation, real interest rates may rise, leading to a decrease in the value of inflation-linked bonds.

[12] The universe of emerging markets local currency debt currently includes securities that are rated ''investment grade'' as well as ''non-investment grade'' securities. The Fund will invest in both investment grade and non-investment grade securities, as well as unrated securities. There is no limit on the amount of the Fund's assets that may be invested in non-investment grade and unrated securities.

[13] In reaching liquidity decisions, the Adviser and/or the Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[14] The Fund will use futures contracts to hedge interest rate risk and to actively manage interest rate exposure.

[15] Option purchases and sales can be used to help manage exposures (*i.e.,* exposures to interest rates and/or currencies) more efficiently in the portfolio, while limiting downside.

[16] At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') (*see* footnote 37) or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[17] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or the Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or the Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider such factors as the counterparty's liquidity, its reputation, the Adviser's and/or Sub-Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

[18] At least 90% of the Fund's net assets that are invested in foreign currencies will be invested in currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, *see www.bis.org.*

delivery of the relevant currency. The effect on the value of the Fund is similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund will comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in derivative instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund will earmark or set aside cash, U.S. government securities, high grade liquid debt securities and/or other liquid assets permitted by the Commission in a segregated custodial account in the amount prescribed.[19]

Other Investments

Under normal market conditions, the Fund will invest substantially all of its assets to meet its investment objective and, as described above, the Fund may invest in derivative instruments and foreign currencies. In addition, the Fund may invest its remaining assets as described below.

The Fund may invest up to 20% of its net assets in non-U.S. corporate bonds that are not included within the meaning of the term ''Debt Instruments'' (referred to as ''Corporate Bonds''). The Fund will invest only in Corporate Bonds that the Adviser and/or the Sub-Adviser deems to be sufficiently liquid.[20] Under normal market conditions, a Corporate Bond must have $200 million (or the foreign currency equivalent thereof) or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of non-U.S. corporate bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in Corporate Bonds with less than $200 million (or the foreign currency equivalent thereof) par amount outstanding if (i) the Adviser and/or the Sub-Adviser deems such securities to be sufficiently liquid and (ii) such investment is deemed by the Adviser and/or the Sub-Adviser to be in the best interest of the Fund.

The Fund may invest up to 20% of its net assets in short-term debt securities (which are listed in the following paragraph) that are not included within the meaning of the term ''Debt Instruments,''[21] money market funds and other cash equivalents, or it may hold cash. For temporary defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in these securities or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or Sub-Adviser believes that securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are the following: (1) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) short-term securities issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities;[22] (3) certificates of deposit issued against funds deposited in a bank or savings and loan association; (4) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (5) repurchase agreements,[23] which involve purchases of debt securities; (6) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (7) commercial paper, which is short-term unsecured promissory notes;[24] and (8) other securities that are similar to the foregoing.

The Fund may invest up to 20% of its net assets in the securities of money market funds (as noted above) and other ETFs[25] that invest primarily in short-term debt securities or Debt Instruments and, except for these investments in other investment companies, the Fund will not invest directly[26] in equity securities. The ETFs in which the Fund will invest will be exchange-listed and trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.[27]

The Fund may hold up to an aggregate amount of 15% of its net assets in

[19] With respect to guidance under the 1940 Act, *see* 15 U.S.C. 80a–18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); *Dreyfus Strategic Investing,* Commission No-Action Letter (June 22, 1987); *Merrill Lynch Asset Management, L.P.,* Commission No-Action Letter (July 2, 1996).

[20] *See* footnote 13.

[21] Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch Ratings (''Fitch'') and having a maturity of one year or less. For the sake of clarity, the foregoing parameters do not apply to Debt Instruments.

[22] The relevant non-U.S. government, agency or instrumentality must have a long-term debt rating of at least A by S&P Ratings, Moody's or Fitch. For the sake of clarity, the foregoing ratings requirement does not apply to Debt Instruments.

[23] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (''Trust Board''). The Sub-Adviser will review and monitor the creditworthiness of such institutions. The Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[24] Except for commercial paper that is included within the meaning of the term ''Debt Instruments,'' the Fund will only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

[25] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies (including without limitation ETFs) in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs.

[26] It is possible, however, that an investment company in which the Fund invests will invest a portion of its assets in foreign and/or domestic equity securities.

[27] *See* footnote 37.

illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and/or the Sub-Adviser.[28] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (b) securities of other investment companies.[29]

The Fund may purchase securities on a when-issued or other delayed delivery basis and may enter into reverse repurchase agreements. Reverse repurchase agreements will not be used by the Fund to enhance leverage.

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'')[30] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket''). In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the National Securities Clearing Corporation (''NSCC'') or a Depository Trust Company participant that, in each case, must have executed an agreement that has been agreed to by the Distributor and BBH with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m., Eastern Time) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the transfer agent and only on a business day.

The Fund's custodian, through the NSCC, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day.

Net Asset Value

The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the New York Stock Exchange is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Fund's investments will be valued daily at market value or, in the absence of market value with respect to any investment at fair value, in each case in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the ''Valuation Procedures'') and in accordance with the 1940 Act. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service (''Pricing Service''), or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a Pricing Service, or a major market maker (or dealer). The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

Certain securities, including Debt Instruments, in which the Fund will invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the fair value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities. Typically (other than as described below), Debt Instruments and other debt securities in which the Fund may invest (as described under ''Other Investments'') will be valued using information provided by a Pricing Service. To the extent debt securities have a remaining maturity of 60 days or less when purchased, they will be valued at cost adjusted for amortization of premiums and accretion of discounts. Overnight repurchase agreements will be valued at cost. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

ETFs listed on any exchange other than the Exchange will be valued at the

[28] *See* footnote 13.

[29] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[30] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m., Eastern Time (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* the Registration Statement.

last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. ETFs listed on the Exchange will be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of ETFs traded on the Exchange, the ETFs will be valued using fair value pricing, as described below. ETFs traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such ETFs.

Shares of money market funds will be valued at their net asset values as reported by such funds to Pricing Services.

Exchange-traded options and futures contracts will be valued at the closing price in the market where such contracts are principally traded.

Forward currency contracts and non-deliverable forward currency contracts will be valued at the current day's interpolated foreign exchange rate, as calculated using the current day's spot rate, and the thirty, sixty, ninety, and one-hundred-eighty day forward rates provided by a Pricing Service or by certain independent dealers in such contracts.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Trust Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by the Valuation Procedures and conducted in accordance with the provisions of the 1940 Act. Valuing the Fund's securities using fair value pricing will result in using prices for those securities that may differ from current market valuations or official closing prices on the applicable exchange.

Because foreign securities exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Fund's securities may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, Cusip and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[31] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [32] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[33] (*See* ''Disclosed Portfolio'' below.) The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[34] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (''CTA'') plans for the Shares. Quotation and last sale information for ETFs will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Pricing information for ETFs and exchange-traded derivative instruments will be available from the exchanges on which they trade and from major market

[31] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[32] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[33] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[34] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

data vendors. Pricing information for Debt Instruments, forward currency contracts, non-deliverable forward currency contracts, and debt securities in which the Fund may invest that are described under ''Other Investments'' will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Money market funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or major market data vendors.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change will be defined in the Registration Statement.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [35] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[36] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG,[37] and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how and by

[35] *See* 17 CFR 240.10A–3.

[36] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[37] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

whom information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

Neither the Adviser nor the Sub-Adviser is a broker-dealer, although each is affiliated with a broker-dealer and each is required to implement a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The investment objective of the Fund will be to seek maximum total return and current income. Under normal market conditions, the Fund will invest at least 80% of its net assets (including investment borrowings) in Debt Instruments that are denominated in the local currency of the issuer. Under normal market conditions, at least 80% of the Fund's net assets that are invested in Debt Instruments will be invested in Debt Instruments that are issued by issuers with outstanding debt of at least $200 million (or the foreign currency equivalent thereof). The Fund's exposure to any single country generally will be limited to 20% of the Fund's net assets (although this percentage may change from time to time in response to economic events). There is no limit on the amount of the Fund's assets that may be invested in non-investment grade and unrated securities. The Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. Under normal market conditions, no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. The Fund will comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in derivative instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). The Fund's investments in derivative instruments will not be used to seek to achieve a multiple or inverse multiple of an index.

The Fund may invest up to 20% of its net assets in Corporate Bonds. Under normal market conditions, a Corporate Bond must have $200 million (or the foreign currency equivalent thereof) or more par amount outstanding and significant par value traded to be considered as an eligible investment. However, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in Corporate Bonds with less than $200 million (or the foreign currency equivalent thereof) par amount outstanding if (i) the Adviser and/or the Sub-Adviser deems such securities to be sufficiently liquid and (ii) such investment is deemed by the Adviser and/or the Sub-Adviser to be in the best interest of the Fund.

The Fund may invest up to 20% of its net assets in the securities of money market funds and other ETFs that invest primarily in short-term debt securities or Debt Instruments, and, except for these investments in other investment companies, the Fund will not invest directly in equity securities. The ETFs in which the Fund will invest will be exchange-listed and trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Also, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and/or the Sub-Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be valued daily at market value or, in the

absence of market value with respect to any investment, at fair value, in each case in accordance with the Valuation Procedures and the 1940 Act.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information for ETFs will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Pricing information for ETFs and exchange-traded derivative instruments will be available from the exchanges on which they trade and from major market data vendors. Pricing information for Debt Instruments, forward currency contracts, non-deliverable forward currency contracts, and debt securities in which the Fund may invest that are described under ''Other Investments'' will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Money market funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or major market data vendors.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–073 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–NASDAQ–2014–073. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–073 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18431 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72713; File No. SR–Phlx–2014–49]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Disclose Publicly the Sources of Data Used for Exchange Functions

July 29, 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 July 16, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes a rule change to disclose publicly the sources of data, whether from the network processors or from direct data feeds, that Phlx utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In her June 5, 2014 market structure speech, the Chair requested that all national securities exchanges review and disclose their policies and procedures governing the market data used when performing important exchange functions.[3] In a letter dated June 20, 2014, the Director of the Division of Trading and Markets codified this request:

> We believe there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof, are used by the exchanges for purposes of (1) order handling and execution (*e.g.,* with pegged or midpoint orders), (2) order routing, and (3) regulatory compliance, as applicable. . . . Accordingly, we ask that proposed rule changes be filed that disclose the particular market data feeds that are used for each of these purposes. Consistent with your recent discussions with Commission staff, we ask that each SRO file these proposed rule changes with the Commission by July 15, 2014.[4]

Phlx fully supports the Commission's efforts to provide more clarity in this area. Through this proposed rule change, Phlx is publicly clarifying on a market-by-market basis the specific network processor and proprietary data feeds that Phlx utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. These complex practices are governed by a few, simple principles that are designed to ensure that Phlx has the most accurate view of the trading interest available across multiple markets, and to maximize the synchronization of the many exchange functions that depend upon the calculation of an accurate NBBO and top-of-book for each market. These principles are:

1. Phlx uses a proprietary data feed from each exchange that provides a reliable proprietary data feed. Where no reliable proprietary data feed is available, Phlx uses the network processor feed;

2. Where Phlx uses a proprietary data feed for an exchange quote, it also maintains access to the network processor feed as a back-up in the event a specific proprietary feed become unavailable or unusable for any reason;

3. Phlx uses the same proprietary data feed when performing order handling, routing, and execution functions, and also when the execution and routing system performs internal compliance checks related to those functions; and

4. Phlx acquires and processes all proprietary and network processor feeds via the same technological configuration (*i.e.,* telecommunication circuitry, switches, and feed handlers) to the greatest extent possible.

5. Phlx calculates the National Best Bid and Offer (''NBBO'') and top-of-book for each exchange at a single point within the Phlx system, and then distributes that data simultaneously to numerous applications performing order handling,[5] routing, execution, and internal compliance functions throughout the Phlx system.

As of the date of this filing, Phlx utilizes the following data feeds for the handling, execution and routing of orders, as well as for performing related compliance checks:

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	CQS/UQDF	n/a.

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O'Neill & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

[4] *See* Letter from Steven Luparello, Director, SEC Division of Trading and Markets, to Robert Greifeld, Chief Executive Officer, NASDAQ OMX Group, Inc., dated June 20, 2014.

[5] With respect to order handling, the NBBO and top-of-book calculation feeds applications governing the proper processing midpoint orders, pegged orders, price-to-comply orders, and retail orders.

Market center	Primary source	Secondary source
B—NASDAQ OMX BX	BX ITCH 4.1	CQS/UQDF.
D—FINRA ADF	CQS/UQDF	n/a.
J—DirectEdge A	EdgeBook	CQS/UQDF.
K—DirectEdge X	EdgeBook	CQS/UQDF.
M—CSX	CQS/UQDF	n/a.
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF.
P—NYSE Arca	ArcaBook Binary uncompacted	CQS/UQDF.
T/Q—NASDAQ	ITCH 4.1	CQS/UQDF.
W—CBOE	CQS/UQDF	n/a.
X—NASDAQ OMX PSX	PSX ITCH 4.1	CQS/UQDF.
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF.
Z—BATS Exchange	BATS PITCH	CQS/UQDF.

Phlx uses these feeds to calculate the NBBO via an application called the ''NMSFeed.'' The NMSFeed consumes the Phlx Protected Quote Service (''NPQS''), which provides an internal view of that exchange's own market data as ITCH, plus the proprietary and network processor market data feeds listed above. The NMSFeed calculates a Regulation NMS-Compliant ''Best Bid or Offer'' (''Compliant BBO''), and then delivers that information throughout the Phlx System, including to the ''OUCH'' order entry ports,[6] the routing system, and various compliance applications described below.

Upon receipt of an update to a protected quote for a specific venue, the NMSFeed updates its quote for that venue, recalculates the consolidated BBO based upon the update, and recalculates the Compliant BBO after applying Phlx's own BBO. Any quote that crosses Phlx's BBO is ignored. Phlx odd lot orders at the same price are aggregated and considered in the NBBO calculation if the sum is greater than or equal to a round lot. Otherwise, they are not considered in the NBBO calculation. Out of the remaining quotes, the most aggressive remaining bid and offer (excluding Phlx[7] and any destination which has been excluded from the NBBO in compliance with the self-help procedures under Regulation NMS) is selected and reported as the best quote. If away markets are crossing the market after applying Phlx's BBO, orders will be accepted as originally priced and have the potential to execute. Any order sent to Phlx that is not an Intermarket Sweep Order (''ISO'') will have the Compliant BBO check enforced by the system.[8]

The Phlx OMX Routing and Special Handling System (''RASH'') utilizes the Compliant BBO to determine if and when an order with special processing directives is marketable either against one or more orders in either the Core Matching System or a remote trading venue. RASH also receives market data feeds from certain venues not displaying protected quotes in the national market system for use in ''XQDRK'' [sic] and ''XCST'' routing strategies set forth in Phlx Rule 3315(a)(1)(A)(xiii) [sic] and (xiv) [sic], respectively. RASH maintains a number of routing processes, or Routers, unique to each venue that the System accesses. These Routers maintain a limited set of details for orders that are configured as routable by the user, while also monitoring the current best bid and best offer prices on each exchange.

The Phlx system includes internal compliance applications related to locked and crossed markets, trade throughs, limit-up/limit-down, and Regulation SHO compliance. Each of these applications utilizes the Compliant BBO to ensure compliance with applicable regulations. Phlx operates a separate real-time surveillance system that is external to the execution systems and that monitors the execution system's compliance with applicable rules and regulations. The real-time surveillance system utilizes a ''mirrored'' version of the internal NMSFeed in various realtime surveillance patterns, including (1) Lock/Cross, which detects lock/cross events across all markets, regardless of whether or not Phlx is a participant in the event; (2) Trade Through, which detects potential trade through events for all three Phlx equity markets; and (3) RegSho, which detects potential RegSho violations, alerting when a trade executes at or below the NBB at the time of order entry while the stock is in a RegSho restricted state.

In addition to the operational transparency provided above, Phlx is also proposing to add Rule 3304, which will provide for the public display of the proprietary and network processor feeds that Phlx utilizes in the order handling, routing, and execution processes described above, as well as in the compliance functions described above. Phlx will display this information on *www.nasdaqtrader.com,* which is heavily used by Phlx members and their customers.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general and with Sections 6(b)(5) of the Act,[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in

[6] OUCH is a protocol that allows Phlx participants to enter, replace and cancel orders and receive executions. In addition to OUCH, Phlx offers the FLITE protocol as an option for participants. In this document, references to OUCH also include FLITE because they are interchangeable for these purposes.

[7] Deletion of Phlx's quote at this stage of the process is necessary because otherwise the system would prevent valid executions on Phlx in the erroneous belief that such executions would be ''trade throughs'' in violation of Regulation NMS.

[8] In general, any order that is sent to Phlx with an ISO flag is not re-priced and will be processed at its original price. There are a limited number of circumstances in which an order marked as an ISO will be determined not to be executable at its original price and will be re-priced. These include re-pricing under the Plan to Address Extraordinary Market Volatility, re-pricing to comply with Regulation SHO, and the re-pricing of an order with a post-only condition if Phlx has an order at that price at the time the order is accepted.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–49 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–2014–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–49 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18387 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72706; File No. SR–MSRB–2014–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed New Rule G–44, on Supervisory and Compliance Obligations of Municipal Advisors; Proposed Amendments to Rule G–8, on Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers; and Proposed Amendments to Rule G–9, on Preservation of Records

July 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of proposed new Rule G–44, on supervisory and compliance obligations of municipal advisors; proposed amendments to Rule G–8, on books and records to be made by brokers, dealers and municipal securities dealers; and proposed amendments to Rule G–9, on preservation of records (the ''proposed rule change''). The MSRB requests that the proposed rule change be approved with an implementation date six months after the Commission approval date for all changes except for proposed Rule G–44(d), which municipal advisors would be required to implement eighteen months after the Commission approval date.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

Following the financial crisis of 2008, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[3] The Dodd-Frank Act establishes a new federal regulatory regime requiring municipal advisors to register with the SEC, deeming them to owe a fiduciary duty to their municipal entity clients and granting the MSRB rulemaking authority over them. The MSRB, in the exercise of that authority, is currently developing a comprehensive regulatory framework for municipal advisors. A significant element of that regulatory framework is proposed Rule G–44, which would establish supervisory and compliance obligations of municipal advisors when engaging in municipal advisory activities. Proposed Rule G–44 utilizes a primarily principles-based approach to supervision and compliance in order to, among other things, accommodate the diversity of the municipal advisor population, including small and single-person entities. Proposed Rule G–44 is accompanied by proposed amendments to Rules G–8 and G–9 to establish fundamental books-and-records requirements for municipal advisors, including those related to their supervisory and compliance obligations.

Proposed Rule G–44

Proposed Rule G–44 follows a widely accepted model in the securities industry consisting of a reasonably designed supervisory system complemented by the designation of a chief compliance officer (''CCO''). The proposed rule draws on aspects of existing supervision and compliance regulation under other regimes, including those for broker-dealers under rules of the MSRB and Financial Industry Regulatory Authority (''FINRA'') and for investment advisers under the Investment Advisers Act of 1940 (''Advisers Act'').

In summary, proposed Rule G–44 would require:

- A supervisory system reasonably designed to achieve compliance with applicable securities laws;
- Written supervisory procedures;
- The designation of one or more municipal advisor principals to be responsible for supervision;
- Compliance processes reasonably designed to achieve compliance with applicable securities laws;
- An annual certification regarding those compliance processes;
- The designation of a CCO to administer those compliance processes; and
- At least annual reviews of compliance policies and supervisory procedures.

The proposed amendments to Rules G–8 and G–9, in summary, would require each municipal advisor to make and keep records of its:

- Written supervisory procedures;
- Designations of persons as responsible for supervision;
- Written compliance policies;
- Designations of persons as CCO;
- Reviews of compliance policies and supervisory procedures; and
- Annual certifications regarding compliance processes.

Paragraph (a) of proposed Rule G–44 is the core provision, which would require all municipal advisors to establish, implement and maintain a system to supervise their municipal advisory activities and those of their associated persons that is reasonably designed to achieve compliance with all applicable securities laws and regulations, including applicable MSRB rules (defined as ''applicable rules''). Paragraph (a) specifies that final responsibility for proper supervision rests with the municipal advisor. Subparagraph (a)(i) requires the establishment, implementation, maintenance and enforcement of written supervisory procedures reasonably designed to achieve compliance with applicable rules. Paragraph .01 of the Supplementary Material specifies several factors that municipal advisors' written supervisory procedures must take into consideration, including the advisor's size, organizational structure, nature and scope of activities, number of offices, disciplinary and legal history of its associated persons, the likelihood that associated persons may be engaged in relevant outside business activities, and any indicators of irregularities or misconduct (*i.e.,* ''red flags''). This guidance allows municipal advisors to tailor their supervisory procedures to, among other things, their size, particular business model and structure. Paragraph .02 of the Supplementary Material emphasizes the flexibility of the proposed rule to accommodate small municipal advisor firms, even those with only one associated person. Proposed Rule G–44(a)(i) also specifies requirements to promptly amend supervisory procedures (i) to reflect changes in applicable rules and (ii) as changes occur in the municipal advisor's supervisory system; and to communicate the procedures and amendments to the municipal advisor's relevant associated persons.

Proposed Rule G–44(a)(ii) would require municipal advisors to designate one or more municipal advisor principals to be responsible for the supervision required by the proposed rule. Paragraph .03 of the Supplementary Material specifies the authority and specific qualifications required for municipal advisor principals designated as responsible for supervisory functions. According to the proposed rule, they must have the authority to carry out the supervision for which they are responsible, including the authority to implement the municipal advisor's established written supervisory procedures and take any other action necessary to fulfill their responsibilities. They also must have sufficient knowledge, experience and training to understand and effectively discharge their supervisory responsibilities.[4] Paragraph .03 of the Supplementary Material also specifies that, even if not designated as a supervisory principal, whether a person has responsibility for supervision under the proposed rule would depend on whether, under the facts and circumstances of a particular case, the person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.

Paragraph (b) of proposed Rule G–44 would require municipal advisors to implement processes to establish, maintain, review, test and modify

[3] Public Law 111–2013, 124 Stat. 1376 (2010).

[4] The MSRB intends to propose amendments to MSRB Rules G–2 and G–3 to create the ''municipal advisor principal'' classification, define the term and require qualification in accordance with the rules of the Board. The MSRB expects those changes to become effective well in advance of the proposed implementation dates of the proposed rule change. Although the MSRB does not expect a municipal advisor principal examination to be in place by the time of the implementation dates of the proposed rule change, the MSRB may develop such an examination in the future. The absence of such an examination does not preclude the creation of the classification.

written compliance policies and supervisory procedures. Proposed Rule G–44(b) would specify that the reviews of compliance policies and supervisory procedures must be conducted at least annually. Paragraph .04 of the Supplementary Material would provide, however, that municipal advisors should consider the need, in order to comply with all of the other requirements of the proposed rule, for more frequent reviews. The paragraph also would provide guidance on what, at a minimum, municipal advisors should consider during their reviews of compliance policies and supervisory procedures. These considerations include any compliance matters that arose since the previous review, any changes in municipal advisory activities and any changes in applicable law.

Paragraph (c) of proposed Rule G–44 would require municipal advisors to designate one individual as their CCO. Paragraph .05 of the Supplementary Material would explain the role of a CCO and the importance of that role. Specifically, a CCO is a primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts in order to comply with applicable law. To fulfill this role, a CCO should have competence in the process of (1) gaining an understanding of the services and activities that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the applicable rules pertaining to those services and activities; (3) developing policies and procedures that are reasonably designed to achieve compliance with applicable law; and (4) developing programs to test compliance with the municipal advisor's policies and procedures.[5] Paragraph .05 would further explain that the CCO can be a principal of the firm or a person external to the firm; though, in that case, the person must have the described competence and the municipal advisor retains ultimate responsibility for its compliance obligations. This approach to the CCO function in the proposed rule, which would give municipal advisors the option to outsource the CCO role, follows the approach applicable to investment advisers under the Advisers Act.[6]

Paragraph .06 of the Supplementary Material specifies that the CCO, and any compliance officers that report to the CCO, shall have responsibility for and perform the compliance functions required by the proposed rule. Paragraph .07 of the Supplementary Material provides that a municipal advisor's CCO may hold any other position within the municipal advisor, including senior management positions, so long as the person can discharge the duties of CCO in light of all of the responsibilities of any other positions. This guidance is especially relevant to small municipal advisors, including sole proprietorships and other one-person entities. It makes clear that a single individual may, for example, serve under appropriate circumstances as chief executive officer (''CEO''), supervisory principal and CCO. In addition, as discussed above, the CCO may be external to the firm, such as an outside consultant.

Paragraph (d) of proposed Rule G–44 would require municipal advisors to have their CEO(s) (or equivalent officer(s)) annually certify in writing that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance procedures and written supervisory procedures reasonably designed to achieve compliance with applicable rules. FINRA member firms that also are municipal advisors are already required under FINRA Rule 3130 to make annually a substantially similar certification with respect to applicable federal securities laws and regulations, including MSRB rules. In light of this existing FINRA requirement, proposed Rule G–44(d) would provide for an exception from the annual certification requirement for municipal advisors that are subject to a substantially similar FINRA requirement. Paragraph .08 of the Supplementary Material provides that the execution of the certification and any consultation rendered in connection with the certification does not by itself establish business line responsibility.

Paragraph (e) of proposed Rule G–44 would provide an exemption for banks engaging in municipal advisory activities in the exercise of bank fiduciary powers from Rule G–44 and the related books and records requirements if the municipal advisor certifies in writing annually that it is, with respect to those activities, subject to federal supervisory and compliance obligations and books and record requirements that are substantially equivalent to the supervisory and compliance obligations in Rule G–44 and the books and records requirements of Rule G–8(h)(iii). The ability to so certify and utilize this exemption is provided because it is unnecessary for a municipal advisor to comply with each other provision of proposed Rule G–44 if it is subject to substantially equivalent supervisory and compliance obligations as part of the extensive federal regulatory regime to which banks are already subject.

Paragraph (f) of proposed Rule G–44 would provide a definition of the term ''municipal advisor'' for purposes of the rule as a person that is registered or required to be registered as a municipal advisor under Section 15B of the Act and rules and regulations thereunder.

Proposed Amendments to Rules G–8 and G–9

The proposed amendments to Rules G–8[7] and G–9 would be the first revisions to those rules to address the books and records that must be made and preserved by municipal advisors registered or required to be registered with the SEC. As a fundamental element, new Rule G–8(h)(i) would require each municipal advisor to keep all of the general business records described in Exchange Act Rule 15Ba–1–8(a)(1)–(8). New Rule G–8(h)(v) would require each municipal advisor to make and keep records related to its supervisory and compliance obligations. It would require each municipal advisor to make and keep its written supervisory procedures and written compliance policies, records of designations of persons as CCO and of persons responsible for supervision, records of reviews of its written compliance policies and written supervisory procedures, annual certifications as to compliance processes, and, if applicable, certifications regarding the exemption for federally regulated banks.

The proposed amendments to Rule G–9 would require each municipal advisor to preserve the books and records described in Rule G–8(h), including records related to the municipal advisor's supervisory and compliance obligations, for a period of not less than five years. This five-year preservation requirement would be consistent with the requirement of Exchange Act Rule 15Ba1–8 (on books and records to be made and maintained by municipal advisors).[8] New subsection (h) to Rule G–9 would require, however, that records of the

[5] These qualifications of a CCO draw on those specified in FINRA's CCO requirement for its member firms. *See* FINRA Rule 3130 Supplementary Material .05.

[6] *See* Section 202(25) of the Advisers Act, 15 U.S.C. 80b–2(25), and Rule 206(4)–7, 17 CFR 275.206(4)–7.

[7] Proposed Rule G–8(h) includes reserved subparagraphs (ii)–(iv) for books and records provisions that the MSRB may propose in relation to other rules for municipal advisors. The MSRB will make conforming changes to this proposal as appropriate depending on relevant future rulemaking actions by the MSRB and SEC.

[8] *See* 17 CFR 240.15Ba1–8(b)(1).

designations of persons responsible for supervision and designations of persons as CCO be preserved for the period of designation of each person designated and for at least six years following any change in such designation. This six-year preservation requirement is supported by, among other things, the importance of such documents in later ascertaining the identity of responsible persons during particular periods of time. Moreover, it would be consistent with the current provisions of Rule G–9 for records of similar designations by brokers, dealers and municipal securities dealers.

The proposed amendments to existing Rule G–9(e) would expressly provide that municipal advisors may retain records using electronic storage media or by other similar medium of record retention, subject to the retrieval and reproduction requirements of Rule G–9. The allowance for this means of compliance would be made generally applicable, so as to expressly accommodate the use of electronic storage media by dealers as well as municipal advisors.

Proposed Rule G–9(i) would require compliance with Exchange Act Rule 15Ba1–8(b)(2) and (c),[9] regarding records related to the formation and cessation of business. Proposed Rule G–9(j) would require non-resident municipal advisors to comply with Exchange Act Rule 15Ba1–8(f),[10] regarding records of non-resident municipal advisors. Proposed Rule G–9(k) would provide that whenever a record is preserved by a municipal advisor on electronic storage media, if the manner of storage complies with Exchange Act Rule 15Ba1–8(d),[11] it will be deemed to be preserved in a manner that is in compliance with the requirements of Rule G–9. This provision would give municipal advisors the choice to comply with either the SEC's or the MSRB's preservation requirements.

2. Statutory Basis

Section 15B(b)(2) of the Act[12] provides that

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(A)(i) of the Act[13] provides that the MSRB's rules shall

> appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act[14] provides that the MSRB's rules shall

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2), 15B(b)(2)(A)(i) and 15B(b)(2)(C) of the Act because it would require municipal advisors to adopt a supervisory structure and compliance processes in order to help ensure knowledge of, and compliance with, applicable securities laws and regulations, including applicable MSRB rules. The applicable securities laws include, without limitation, relevant provisions of the Act and Commission rules thereunder, including the Commission's registration, form submission and recordkeeping requirements for municipal advisors.[15] Supervision and compliance functions are fundamental to preventing securities law violations from occurring, while they also promote early detection and prompt remediation of violations when they do occur. Such functions are complementary to an enforcement program designed to deter violations of securities laws by imposing penalties for violations after they occur. The MSRB believes that, for example, requiring each firm's chief executive officer (or equivalent officer) to provide an annual certification will help ensure that compliance processes are given sufficient attention at the highest levels of management and will help foster compliance, without adding a significant burden.

Section 15B(b)(2)(L)(iv) of the Act[16] requires that rules adopted by the Board

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act. While the proposed rule change would affect all municipal advisors, including small municipal advisors, it would be a necessary and appropriate regulatory burden in order to promote compliance with MSRB rules. Proposed Rule G–44 utilizes a primarily principles-based approach to supervision in order to, among other things, accommodate the diversity of the municipal advisor population, including small municipal advisors and sole proprietorships. Paragraph .02 of the Supplementary Material notes that even a municipal advisor with only one associated person can have a sufficient supervisory system under proposed Rule G–44. Under the same paragraph, one person may be designated as responsible for supervision and the rule would allow for written supervisory procedures to be tailored based on factors such as the size of the firm. The MSRB believes that all municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they plan to comply with applicable rules.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Act,[17] which provides that the MSRB's rules shall

> prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.

The proposed rule change would require each municipal advisor to make and keep all of the general business records described in Exchange Act Rule 15Ba–1–8(a)(1)–(8). It also would require each municipal advisor to make and keep records of written supervisory procedures and compliance policies, designations of persons as CCO and of persons responsible for supervision, reviews of the adequacy of written compliance policies and written supervisory procedures, the annual

[9] 17 CFR 240.15Ba1–8(b)(2) & (c).

[10] 17 CFR 240.15Ba1–8(f).

[11] 17 CFR 240.15Ba1–8(d).

[12] 15 U.S.C. 78o–4(b)(2).

[13] 15 U.S.C. 78o–4(b)(2)(A)(i).

[14] 15 U.S.C. 78o–4(b)(2)(C).

[15] Registration of Municipal Advisors, Rel. No. 34–70462 (Sept. 20, 2013) (''SEC Final Rule''), 78 FR 67467 (Nov. 12, 2013).

[16] 15 U.S.C. 78o–4(b)(2)(L)(iv).

[17] 15 U.S.C. 78o–4(b)(2)(G).

certifications as to compliance processes, and, if applicable, annual certifications regarding the exemption for federally regulated fiduciary activities of banks. The proposed rule change also contains preservation requirements for the required records, including a modernization of the rule language made generally applicable to dealers as well as municipal advisors, which expressly allows preservation on electronic storage media. The MSRB believes that the proposed amendments to Rules G–8 and G–9 related to recordkeeping and records preservation will promote compliance and facilitate enforcement of proposed Rule G–44, other MSRB rules, and other applicable securities laws and regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In determining whether this standard has been met, the MSRB has been guided by the Board's recently-adopted policy to more formally integrate economic analysis into the rulemaking process. In accordance with this policy the Board has evaluated the potential impacts of the proposed rule change, including in comparison to reasonable alternative regulatory approaches.

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since the supervision and compliance requirements, or substantially equivalent federal requirements, and the books and records requirements would apply equally to all municipal advisors to the extent their municipal advisory activities are not already supervised under existing Rule G–27.[18] The MSRB has considered whether it is possible that the costs associated with the supervision and compliance requirements of the proposed rule, relative to the baseline, may affect the competitive landscape by leading some municipal advisors to exit the market, curtail their activities or consolidate with other firms. For example, some municipal advisors may determine to consolidate with other municipal advisors in order to benefit from economies of scale (*e.g.,* by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with the proposed rule.

It is also possible that the competitive landscape can be affected by leading some municipal advisors, particularly small municipal advisors, to exit the market. Such exits from the market may lead to a reduced pool of municipal advisors. However, as the SEC recognized in its final rule on the permanent registration of municipal advisors, the market for municipal advisory services is likely to remain competitive despite the potential exit of some municipal advisors (including small entity municipal advisors), consolidation of municipal advisors, or lack of new entrants into the market.[19]

It is also possible that competition for municipal advisory services can be affected by whether incremental costs associated with requirements of the proposed rule are passed on to advisory clients. The amount of costs passed on may be influenced by the size of the municipal advisory firm. For smaller municipal advisors with fewer clients, the incremental costs associated with the requirements of the proposed rule may represent a greater percentage of annual revenues, and, thus, such advisors may be more likely to pass those costs along to their advisory clients. As a result, the competitive landscape may be altered by the potentially impaired ability of smaller firms to compete for advisory clients.

The Dodd-Frank Act provides that MSRB rules may not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons provided that there is robust protection of investors against fraud. The MSRB is sensitive to the potential impact of the requirements contained in proposed Rule G–44 and the proposed amendments to Rules G–8 and G–9 on small municipal advisors. The MSRB understands that some small municipal advisors and sole proprietors, unlike larger municipal advisory firms, may not employ full-time compliance staff and that the cost of ensuring compliance with the requirements of the proposed rule may be proportionally higher for these smaller firms. The MSRB believes that the proposed rule change is consistent with the Dodd-Frank Act's provision with respect to burdens imposed on small municipal advisors.

The MSRB solicited comment on the potential burdens of the proposed rule change in a notice requesting comment on a draft Rule G–44 and draft amendments to Rules G–8 and G–9, and a separate notice requesting comment on additional draft amendments to Rules G–8 and G–9 that were initially published in connection with draft MSRB Rule G–42, which notices incorporated the MSRB's preliminary economic analyses.[20] The specific comments and responses thereto are discussed in Part 5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB received twelve comment letters in response to the Request for Comment,[21] and two comment letters specifically addressing the relevant draft record-keeping requirements published in connection with draft MSRB Rule G–42.[22] The comment letters are summarized below by topic.

Support for the Proposed Rule

SIFMA states that it supports the MSRB's efforts to ensure that municipal advisors adopt a supervisory structure for engaging in municipal advisory activities and are properly supervised. SIFMA supports the required elements of supervisory systems contained in proposed Rule G–44 as it follows a widely accepted model in the securities industry. NAIPFA comments that the

[18] Rule G–27 is the MSRB's supervisory rule applicable to brokers, dealers and municipal securities dealers.

[19] *See* SEC Final Rule at 505, 78 FR 67467, at 67608.

[20] MSRB Notice 2014–04 (Feb. 25, 2014) (''Request for Comment''); MSRB Notice 2014–01 (Jan. 9, 2014).

[21] Comments were received in response to the Request for Comment from: American Bankers Association: Letter from Cristeena G. Naser, Vice President and Senior Counsel, dated May 1, 2014 (''ABA''); Bond Dealers of America: Letter from Michael Nicholas, Chief Executive Officer, dated April 28, 2014 (''BDA''); Edwin C. Blitz Investments, Inc.: Email from Edwin Blitz dated March 18, 2014 (''Blitz''); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated April 15, 2014 (''ICI''); LIATI Group, LLC: Email from Weldon Fleming dated March 10, 2014 (''LIATI''); MSA Professional Services, Inc.: Letter from Gilbert A. Hantzsch, Chief Executive Officer, dated April 28, 2014 (''MSA''); National Association of Independent Public Finance Advisors: Letter from Jeanine Rodgers Caruso, President, dated April 28, 2014 (''NAIPFA''); Raftelis Financial Consultants, Inc.: Letter from Alexis F. Warmath, Vice President, and Christopher P.N. Woodcock, President, Woodcock & Associates, Inc., dated April 28, 2014 (''Raftelis''); Roberts Consulting, LLC: Email from Jonathan Roberts dated March 13, 2014 (''Roberts''); Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director, Associate General Counsel, dated April 25, 2014 (''SIFMA''); Tibor Partners, Inc.: Email from William Johnston dated February 25, 2014 (''Tibor''); and Yuba Group: Letter from Linda Fan, Managing Partner, dated April 28, 2014 (''Yuba'').

[22] Cooperman Associates: Letter from Joshua G. Cooperman dated March 10, 2014 (''Cooperman''); and Lamont Financial Services: Letter from Robert A. Lamb, President, dated March 10, 2014 (''Lamont'').

proposed rule strikes an appropriate balance between a principles-based and a prescriptive approach and encourages the MSRB to retain the overall tone and structure of the proposed rule. ICI supports the proposal and comments that its requirements are consistent with those imposed on other securities professionals.

Flexibility for Smaller Municipal Advisors

BDA comments that the proposed rule is too flexible in allowing small firms to determine and carve out an accommodation for themselves. BDA further states that the MSRB should set forth minimum standards that all municipal advisor firms must meet when establishing supervisory and compliance procedures, but allow firms to decide how to implement them. BDA states that small firms should not be allowed to diminish their obligations. Similarly, MSA states that the proposed rules appear to hold larger firms to a higher standard than smaller firms and recommends a prescriptive approach that places clear regulatory requirements on all firms, regardless of size. In contrast, NAIPFA comments that the proposed rule appropriately accommodates small and single person municipal advisors by, among other things, allowing supervisory systems to be tailored to the size of the firm. Yuba comments that the proposed rule is biased towards larger firms and does not make adequate accommodations for smaller and single-person firms since larger firms are able to spread the actual and opportunity costs of compliance over a larger number of clients and employees. MSA asks whether large firms will be held to a stricter compliance standard than small firms with respect to the development and implementation of policies and procedures.

The MSRB acknowledges that the proposed rule change contains standards that may vary based on firm size. The MSRB believes that the appropriateness of supervisory procedures is dependent on a firm's size since, for example, procedures that may be appropriate for a two-person firm would likely not be effective for a much larger firm. The proposed rule change deliberately gives firms flexibility to tailor their supervisory system to their particular firm. The MSRB believes that the proposed rule change strikes an appropriate balance between burdens on small advisors and flexibility for small advisors. This balance is evident from the comments, some of which state that the proposed rule is too burdensome for small advisors, while others state that the proposed rule gives small advisors too much flexibility.

Sole-Proprietorships

NAIPFA comments that the MSRB may want to consider exempting single person firms from developing a compliance manual. According to NAIPFA, since sole-proprietors will be obligated to monitor their own activities and will be disproportionately burdened by the proposed rule, requiring them to undertake such activities will not result in any appreciable benefit to municipal entities or obligated persons. Tibor comments that it is a one-man operation with one client and that the proposed rule will ultimately deprive its client from access to valuable advice. Roberts asks what written policies on supervision sole proprietors can have and asks why it is necessary for a sole proprietor to assign the responsibility for the management of monitoring this supervision to the sole individual at the firm. Roberts also asks what the sole-proprietor should do in any self-imposed self-evaluation and why deal files are not enough.

The MSRB acknowledges that the costs associated with the proposed rule could fall disproportionately on small municipal advisors, including sole-proprietorships; however, to address this concern, the proposed rule change states that a municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system and that written supervisory procedures can be tailored to the firm's size. Requiring sole-proprietors to have a supervisory system in place is important because oversight of a firm's municipal advisory activities is essential regardless of firm size. Proposed Rule G–44 deliberately does not contain specific prescriptions as to the procedures a sole proprietor should have as such detail would undermine the flexibility of the proposed rule and the primarily principles-based approach utilized. Under the proposed rule's flexible principles, procedures would be required to be reasonably designed to achieve compliance, and such reasonableness will depend in part on the municipal advisor's size and particular business model. The MSRB believes, as noted, that all municipal advisors, regardless of size, will benefit from a requirement that they document with specificity how they plan to comply with applicable rules. Developing appropriate systems and documenting and following written procedures is a well established practice among businesses, regardless of size, for facilitating compliance with regulation in a broad range of other areas (*e.g.,* taxes, human resources).

Self-Certification

BDA states that Rule G–44 should require all municipal advisors to complete a periodic self-certification regarding the meeting of professional qualification standards by its associated persons, as well as to certify the municipal advisor's ability to comply, and history of complying, with all applicable regulatory requirements. BDA states that it is critical for municipal advisors to self-certify that they are meeting the same professional qualification standards as broker-dealers regardless of size much like rules for broker-dealers and comments that, since self-certification is already required of broker-dealers, municipal advisors that are already broker-dealers should not be unduly burdened. MSA comments that periodic self-certifications seem practical and feasible but that certification metrics should be outlined by the MSRB for consistency among all regulated firms, regardless of size. In contrast, NAIPFA sees no value in requiring municipal advisor representatives to complete a periodic self-certification since it would appear to simply create an additional regulatory burden without any appreciable benefits. NAIPFA opposes the creation of a self-certification requirement unless an objective basis can be provided showing that it would result in a decrease in the number of compliance violations.

The MSRB has revised the proposal to create a self-certification in response to the BDA and MSA comments, though the proposed requirement is less broad. The commenters referenced a certification regarding the meeting of professional qualification standards and the ability to comply, and history of complying, with all applicable regulatory requirements. The proposed self-certification, like that in FINRA Rule 3130, is with regard to processes to establish, maintain, review, test and modify written supervisory procedures reasonably designed to achieve compliance with applicable rules. The MSRB does not believe it is feasible or should be necessary to show in advance, as NAIPFA suggests, that the proposed self-certification will result in a decrease in the number of compliance violations.

Outsourcing CCO Function

NAIPFA comments that municipal advisors should be able to outsource the CCO function and that there should be no requirement that the CCO be either a principal or associated person of a

municipal advisor. SIFMA does not object to the proposal's flexibility with respect to outsourcing the CCO function. Raftelis comments that the ability of municipal advisors to outsource the CCO function may be essential for fairly small firms to be able to address the proposed rule's requirements. BDA asks the MSRB to make clear within the language of proposed Rule G–44 that the firm remains ultimately responsible for any decisions made by the CCO, whether the position is outsourced or not. BDA acknowledges that this is included in Paragraph .05 of the Supplementary Material but states that it should be included in rule text beyond the Supplementary Material. MSA agrees that the ability to outsource the CCO position could help promote and improve the fiduciary duties required of municipal advisors, but questions whether municipal advisors will elect to use outside CCOs due to liability and exposure concerns since compliance ultimately falls to the municipal advisor firms.

No commenters opposed the option provided in the proposed rule to outsource the CCO role. The MSRB believes that the statement in paragraph .05 of the Supplementary Material that the municipal advisor retains ultimate responsibility for its compliance obligations is adequate; therefore, the MSRB is not revising the rule text in response to BDA's comment.

Recordkeeping Requirements

SIFMA supports the proposed amendments to Rules G–8 and G–9 related to municipal advisor supervisory and compliance obligations and comments that the proposed recordkeeping and retention requirements are reasonable and are in line with existing MSRB requirements. NAIPFA requests that proposed Rule G–9(h) be amended to state that the records described in Rule G–8(h)(iii)(B) and (D) are required to be preserved only for the duration of a person's designation as a supervisor and/or CCO and for at least five years following any change in such designation to harmonize this portion of Rule G–9 with similar portions of Exchange Act Rule 15Ba1–8 [23] relating to items such as the requirement that firms retain records relating to the ''names of persons who are currently, or within the past five years were, associated with the municipal advisor.'' NAIPFA further comments that since Exchange Act Rule 15Ba1–8 mandates a five-year retention period following a person's disassociation, it would make sense to impose a similar five-year retention requirement under proposed rule G–9(h). Finally, NAIPFA states that establishing a six-year retention requirement when all other similar retention requirements are five years creates an inconsistent and overly complex regulatory regime with no appreciable benefit. MSA observed it would be premature to attempt to quantify record-keeping costs at this time as there are still unanswered questions regarding what types of information will be required for regulatory retention compliance.

As discussed in the Request for Comment, there is a six-year retention period for records relating to designations of persons responsible for supervision and as CCO to be consistent with the current provisions of Rule G–9 for records of similar designations by brokers, dealers and municipal securities dealers. This longer requirement is also supported by the importance of such records in ascertaining the identity of responsible persons during particular periods of time. The proposed rule change requires the other records related to municipal advisor supervisory and compliance obligations to be preserved for five years to be consistent with the preservation requirements of Exchange Act Rule 15Ba1–8. Therefore, the MSRB is not proposing any revisions in response to NAIPFA's comments on the retention periods.

On the subject of the fundamental record-keeping requirements initially proposed in connection with draft MSRB Rule G–42, Cooperman requested that the MSRB provide a draft of a prototype baseline policies and procedures guide that smaller financial advisor firms can adopt or modify, as needed. Cooperman also requested that the MSRB clarify that maintenance of documents and emails on a firm's email site or through its internet service provider will comply with records retention requirements. Lamont asked whether all emails and client records should be saved in the same folder in electronic media. In addition, Lamont stated that costs will be substantial and not necessarily spread among all clients, that recordkeeping will be extremely time consuming and will result in lost productivity, and that the costs will impact small profit margins in the short term ''before prices can be adjusted by the [municipal advisor] and the client.''

The MSRB has declined at this time to provide a policies and procedures guide in part because it may be impracticable for the MSRB to develop policies and procedures that would appropriately address the scope and diversity of business models and particular practices of the numerous municipal advisor firms. With regard to records retention, the proposed amendments to Rule G–9 contain relatively principles-based requirements, including the standard that records be available for ready retrieval, inspection and production of copies. The draft amendments to Rule G–9 would not prescribe the specific details of how or where electronic records must be preserved. Additionally, if a municipal advisor would prefer to comply with the SEC's electronic record retention requirements (SEC Rule 15Ba1–8(d)), as interpreted by the SEC, the proposed amendments to Rule G–9 would provide that alternative. The issue of compliance costs being passed on to municipal entity and obligated person clients is addressed separately below.

Comparison to Rule G–27

SIFMA states that it commends the MSRB for proposing a supervisory regime of similar robustness to the requirements of Rule G–27, resulting in a level playing field for all municipal advisors. SIFMA comments that municipal advisors should consider as a business practice some of the specific requirements contained in Rule G–27 that are not in the proposed rule. BDA states that the draft rule sets a lower baseline than Rule G–27 and some of the requirements imposed on municipal securities dealers in Rule G–27 should be extended to municipal advisors.

The MSRB recognizes that the approach taken in the proposed rule is different than that in Rule G–27. Rule G–27 reflects evolving broker-dealer industry practices and many of its more prescriptive elements reflect the fact that many dealers, unlike municipal advisors in their capacity as municipal advisors, hold customer funds and securities for safekeeping. In any event, complete parallelism between Rules G–44 and G–27 is not possible given that broker-dealers do not owe a fiduciary duty and therefore are subject to different underlying standards of conduct. BDA did not provide any details regarding which aspects of Rule G–27 should be applied to municipal advisors and why it would be appropriate to do so. The MSRB does not believe that it is appropriate at this time to apply any additional provisions from Rule G–27 to municipal advisors and is, therefore, not amending the proposed rule in response to these comments.

[23] 17 CFR § 240.15Ba1–8.

Economic Analysis—General

SIFMA comments that the MSRB's preliminary economic analysis incorporated in the request for comment justifies the supervisory and recordkeeping requirements in the proposed rule. MSA comments that there is little publicly available information about the municipal advisor industry and, as such, benefits to municipal entities would seem clear as they relate to required informational transparency and the requirement of a supervisory structure. However, MSA states that explaining the costs and benefits of regulatory compliance to the benefiting municipalities is an element that has not received adequate attention.

The MSRB has engaged in, and will continue to engage in, education and outreach initiatives to municipal entities, obligated persons and the general public regarding the MSRB's regulation of municipal advisors.

NAIPFA comments that there is a lack of objective evidence indicating that firms have engaged in widespread violations of their fiduciary duties, and therefore a need does not exist for the MSRB to articulate supervisory or compliance obligations at this time since the costs (including significant impacts on competition, market efficiency, and capital formation), time and effort that will be required to be expended by municipal advisors will likely outweigh any incremental benefits that may be realized by municipal entities and obligated persons. Raftelis comments that the requirement to maintain written records of supervisory and compliance policies and procedures may be unnecessary, may not provide any additional benefits, and may be overly burdensome and costly. Raftelis comments that with respect to the specific services provided by firms that serve the water and wastewater utility industry and whose role as a municipal advisor is fairly limited, the benefits of the proposed rules will be small and there is a risk that information and services relied on by government-owned utilities to facilitate the process of borrowing money may become more expensive and less readily available.

Proposed Rule G–44 is intended to prevent unlawful conduct and to help detect and promptly address unlawful conduct when it does occur. The need for proposed Rule G–44 arises from the MSRB's regulatory oversight of municipal advisors as provided under the Dodd-Frank Act. The Dodd-Frank Act establishes a federal regulatory regime that requires municipal advisors to register with the SEC and grants the MSRB broad rulemaking authority over municipal advisors. The MSRB, in the exercise of that authority, is in the process of developing a regulatory framework for municipal advisors. Supervision and compliance functions play an important role in promoting and fostering compliance by municipal advisors with all applicable securities laws, including applicable MSRB rules. Supervision and compliance functions are designed to prevent violations from occurring, while they also promote early detection and prompt remediation of violations when they do occur. Such functions are complementary to an enforcement program designed to deter violations of securities laws by imposing penalties for violations after they occur.

For similar reasons, the regulation of supervisory and compliance functions is well established within the financial services industry. The model of requiring a reasonably designed supervisory system complemented by the designation of a CCO to be responsible for compliance processes is a widely accepted regulatory model across the financial services industry. To achieve comparable levels of compliance with applicable securities laws as seen with other financial services professionals, there is a need for a MSRB rule establishing municipal advisors' supervisory and compliance obligations.

The MSRB believes that the proposed rule change will help to prevent violations of fiduciary duties and does not believe that prior evidence of such violations is necessary to support implementation of the proposed rule change. Proposed Rule G–44 follows a widely accepted model in the securities industry of a reasonably designed supervisory system complemented by the designation of a CCO and draws on aspects of existing supervision and compliance regulation under related regimes.

Economic Analysis—Small Firms and Sole Proprietorships

Many of the comments on the proposed rule and proposed amendments were directed to the costs of compliance for small municipal advisors. Yuba, a seven-person firm, provided specific cost estimates related to complying with draft Rules G–42 and G–44 during the first six months of 2014 that exceeded $125,000, or nearly $18,000 per person. Yuba states that the opportunity cost of time spent on compliance is time that is not available for client matters, which directly impacts the firm's bottom line negatively. Yuba encourages the MSRB to evaluate the potential impact and costs of compliance on small firms both with respect to increased out-of pocket costs and the opportunity cost of the firm's time. Yuba further states that, with fewer people and no other business lines than their advisory work, smaller firms will be impacted much more than larger firms. Yuba recommends that the MSRB better accommodate smaller firms by consolidating regulatory communications and rules into fewer publications and webinars.

Roberts, a sole proprietorship municipal advisory firm, states that the supervision requirement for a one-person firm creates an undue burden as the supervision would require Roberts to supervise himself. Roberts comments that a larger organization can spread the costs, time, and attorney's fees to produce a procedures manual and still be able to source and do a deal for profit. Roberts also comments that the MSRB needs to consider the rules in the context of the whole when determining the burden because one rule in isolation is not an undue burden but the totality of all of the rules will cause sole proprietors to struggle.

LIATI has two persons involved in municipal advisory activities and comments that the imposition of a supervisory scheme similar to that required by FINRA will be a major cost in terms of time and money to initiate and maintain.

As discussed above, the MSRB has acknowledged that the costs associated with the proposed rule change could fall disproportionately on small municipal advisory firms. To address this concern, the proposed rule allows for small advisors, and advisors with other particular traits, to reasonably vary their supervisory procedures as appropriate. Proposed Rule G–44 states that a municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system under the proposed rule, that written supervisory procedures can be tailored to the firm's size, and that the CCO role may be outsourced. As new municipal advisor rules are proposed, the MSRB has carefully considered, and will continue to carefully consider, the burden of municipal advisor regulation as a whole.

Costs Passed to Municipal Entities and Obligated Persons

NAIPFA comments that the costs of implementing the proposed rules will directly or indirectly be passed to municipal entities and obligated persons. MSA comments that the development and implementation of policies and procedures, annual filing

and/or certification requirements, and the preservation of client records will result in additional costs that will be passed to municipalities. Raftelis comments that costs imposed on municipal advisors as a result of the proposed rules will almost certainly be passed on to municipal entities or obligated persons. Raftelis also states its belief that the proposed rules will add at least five percent to the cost of providing debt issuance support services for its clients, while providing little benefit to the client.

The MSRB is sensitive to the potential that the costs of the proposed rule change may be passed on to municipal entities and obligated persons and this is a factor that the MSRB has considered as part of its economic analysis. The MSRB believes that any increase in municipal advisory fees charged to advisory clients attributable to the incremental costs of the proposed rule compared with the baseline state may be, in the aggregate, minimal in that the cost per municipal advisory firm likely would be spread across the number of advisory engagements for each firm. The MSRB believes that the benefits to municipalities and obligated persons of the proposed rule change outweigh the potential for increased costs being passed on to these entities. The MSRB will continue to consider the impact that increased costs will have on municipal entities and obligated persons as it continues to develop a regulatory framework for municipal advisors.

Prescriptive vs. Principles-Based Approach

Raftelis comments that, although it seems unlikely that a more prescriptive approach would be helpful or advantageous to municipal entities, the current principles-based approach is made less effective due to the ambiguous nature of the language and lack of applicable and useful guidance. Raftelis further comments that, given the broad nature of the types of services and types of firms that may be impacted by the proposed rule change, it will be extremely difficult to provide reasonable guidance that covers all situations.

The MSRB agrees that the proposed principles-based approach is appropriate considering the broad array of firms and types of services impacted by these rules. The MSRB believes that stating more specific obligations in the rule or guidance, however, would undermine the flexibility to create supervisory systems that are reasonably based on, among other things, the municipal advisor's size, organizational structure, nature and scope of activities, and number of offices. The proposed principles-based approach affords municipal advisors flexibility in determining the lowest-cost means to meet regulatory objectives.

Bank Trust Departments and Trust Companies

ABA comments that, with respect to municipal advisory activities of bank trust departments and trust companies (''bank fiduciaries''), the MSRB should consider the fiduciary regulatory regimes of federal and state bank regulators as a baseline for compliance and states that the regulatory regime applicable to bank fiduciaries promotes compliance with applicable securities laws by requiring bank fiduciaries to develop and implement compliance and supervisory policies. ABA believes the regulatory regime applicable to bank fiduciaries satisfies the principles underlying the proposed rule and that compliance with this regulatory regime should be deemed to constitute compliance with the proposed rule as this would further the rule's purpose and avoid overlaying an unnecessary and costly securities-based compliance program on a banking-law compliance regime. ABA believes that the imposition of this costly regulatory regime will provide no additional protections for municipal entities that are bank fiduciary clients and will require bank fiduciaries to undertake costly reviews to determine where there are duplicative or contradictory procedures between the two systems.

All municipal advisors should be required, at a minimum, to adhere to federal supervisory and compliance obligations that are substantially equivalent to those set forth in the proposed rule change regardless of their other business activities and regulatory obligations. In response to this comment, the MSRB has revised proposed Rule G–44 so that a bank fiduciary that certifies annually pursuant to proposed Rule G–44(e) that it is subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of Rule G–44 and the books and records requirements of Rule G–8(h)(iii) would be exempt from the other provisions of Rule G–44 and Rule G–8(h)(iii). Bank fiduciaries would remain subject to all other applicable MSRB rules.

Requests for More Guidance

NAIPFA comments that it is unclear what the last portion of paragraph .02 of the Supplementary Material requires in terms of the development of a compliance policy and requests that additional substantive guidance be provided that addresses how a single associated person's procedures should be prepared in line with this provision.[24] Proposed Rule G–44 requires municipal advisors to develop written supervisory procedures that are ''reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules.'' Raftelis comments that this language is insufficient and asks how municipal advisors know if the written policies and procedures are reasonable and sufficient. Raftelis asks whether the MSRB will provide samples of written procedures and rules to provide a guide for addressing this requirement and also asks who is responsible for determining if the written policies and procedures are adequate and if they will be reviewed by someone at the MSRB and approved. Raftelis comments that the lack of guidance on what the written policies need to address increases the burden and cost of compliance. Raftelis further states that similar comments and concerns are raised by the requirement for conducting a periodic review and update of the written policies and procedures. MSA states that paragraph .01 of the Supplementary Material may not provide enough structure and a more objective, metric-based approach would be preferable; one which clearly defines the appropriate number of municipal advisor representatives required to fulfill regulatory responsibilities. MSA requests direction and clarification from the MSRB and specifically asks whether the MSRB will be releasing an outline with guidelines or requirements for each policy and procedures manual. Finally, Raftelis states that the proposed rule does not provide adequate guidance for smaller firms that provide a limited and specialized set of services that fall under the municipal advisor definition.

The MSRB intends proposed rule G–44 to allow firms a degree of flexibility to develop written supervisory procedures that are appropriate for their particular business. There are no plans at this time to review and pre-approve firms' written supervisory procedures and each municipal advisor is

[24] Paragraph .02 of the Supplementary Material provides, in pertinent part: ''In the case of a municipal advisor with a single associated person, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.''

ultimately responsible for ensuring that its written policies and procedures are adequate. Additionally, the MSRB is not providing an outline of guidelines or requirements as doing so would undermine the flexibility of the principles-based approach utilized by the proposed rule and could not foresee all possible facts and circumstances that could arise among an extremely diverse population of municipal advisors operating in a complex market.

Raftelis asks how large a firm has to be, or how large a municipal advisory practice has to be, before it is necessary to designate additional principals as having supervisory roles. MSA asks what the proper ratio of certified municipal advisor representatives is for appropriate compliance with municipal advisor activities.

Proposed Rule G–44(a) would require a supervisory system reasonably designed to achieve compliance with all applicable rules. Each municipal advisor would be expected to use its judgment to determine how many supervisory principals and municipal advisor representatives are needed for the particular firm to meet this standard.

MSA asks whether the additional experience, training, and knowledge metrics referenced for municipal advisor principals will be identified in subsequent MSRB notices. MSA also asks what metrics the MSRB will use to determine experience, training and knowledge outside of the qualification requirements referenced in MSRB Notice 2014–08.

Under paragraph .03 of the Supplementary Material, municipal advisor principals must have sufficient knowledge, experience and training ''to understand and effectively discharge their [supervisor] responsibilities.'' The MSRB does not currently plan to issue additional guidance regarding this general requirement, which will depend on the particular facts and circumstances. Municipal advisors must use judgment to determine whether a designated supervisory principal's knowledge, experience and training are sufficient.

MSA asks whether a CCO and/or designated municipal advisor principal can also serve in a functional municipal advisor representative capacity, whether the duties of the CCO and municipal advisor professional can be vested in the same person, and whether a person can serve as CCO and municipal advisor principal for a firm.

Under paragraph .07 of the Supplementary Material, a CCO may hold any other position within a municipal advisor, including being designated as a supervisory principal, provided that the person can discharge the duties of CCO in light of all of the responsibilities of any other positions. A CCO or municipal advisor principal may serve in a functional municipal advisor representative capacity.

MSA asks, if a firm decides to outsource the CCO function, whether that entity is operating under the municipal advisor registration of the firm, or whether he or she must be registered as an individual municipal advisor.

If a firm outsources the CCO functions, the CCO is not required on that basis alone to be associated with the municipal advisor and is also not required to be separately registered as a municipal advisor if the individual is not engaging in municipal advisory activities as defined by the Act and the rules and regulations thereunder.

MSA observed that a previous MSRB proposal contained a provision that stated that, if a firm chooses to subcontract with an independent municipal advisor on behalf of its clients, said municipal advisor could not have been associated with the firm for two years. MSA asks if the same provisions apply to the CCO position. MSA states that this requirement, if enforced, may prevent access and participation to the municipal advisory services market by qualified professionals who could provide the municipal advisory services at a reduced cost and asks the MSRB to explain the rationale and intent behind the two-year duration.

The previously proposed Rule G–44 that was filed with the SEC and withdrawn in 2011 has no force or effect and the current proposal does not include a provision similar to that described by MSA.

Implementation Date

BDA states that the MSRB should delay implementation of all of its municipal advisor rules and regulations until they have all been approved by the SEC. BDA further comments that an implementation date of six months following SEC approval of the last of the rules is fair. BDA states that this is particularly important for a rule like G–44 which will require firms to use the information in other rules to establish a complete supervisory system. NAIPFA comments that the MSRB may wish to consider refraining from implementing the proposed rule at this time. ICI recommends that the MSRB provide municipal advisors with a sufficient period of time to be fully compliant with the requirements since municipal advisors will need to adopt or revise existing compliance and supervisory systems to comply with the new rule and hire or appoint necessary qualified personnel. ICI states that the MSRB should provide advisors with a minimum of twelve months to comply with the new rule to avoid unduly straining the resources of such advisors. NAIPFA requests that the proposed rule have a compliance date that is at least ninety days following the date on which it is effective. SIFMA requests that the MSRB provide for a reasonable compliance period of no less than six months.

The MSRB will not delay implementation of the proposed rules until all municipal advisor rules have been approved by the SEC. Municipal advisors are currently subject to a host of applicable federal securities laws, and benefits would flow from having in place supervisory and compliance obligations reasonably designed to ensure compliance with those laws. Moreover, the MSRB believes that it is important for firms to have a supervisory system and compliance processes in place that can be updated as new rules are adopted. The MSRB further believes that an implementation period of six months following the SEC's approval of proposed Rule G–44 and the proposed amendments to Rules G–8 and G–9 will provide sufficient time for firms to develop supervisory systems and compliance processes to comply with the proposed rule change, except for proposed Rule G–44(d). This general period meets SIFMA's request and is longer than NAIPFA's requested implementation period. The MSRB would expect municipal advisors to comply with proposed Rule G–44(d), on annual certifications as to compliance processes, by a date eighteen months following SEC approval.

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 of 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2014–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2014–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2014–06 and should be submitted on or before August 26, 2014.

For the Commission, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18381 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR § 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72715; File No. SR–NASDAQ–2014–038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Listing and Trading of Shares of the NASDAQ–100 DIVS Index ETF Under Rule 5705

July 29, 2014.

On April 10, 2014, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Reality Shares NASDAQ–100 DIVS Index ETF (''Fund'') (formerly, Reality Shares NASDAQ–100 Isolated Dividend Growth Index ETF) under NASDAQ Rule 5705. The proposed rule change was published for comment in the **Federal Register** on April 30, 2014.[3] On May 6, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[4] On June 4, 2014, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On June 13, 2014, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] The Commission received no comment letters on the proposed rule change. This Order institutes proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto.

I. Description of the Proposal

A. In General

The Exchange proposes to list and trade Shares of the Fund under NASDAQ Rule 5705(b), which governs the listing and trading of Index Fund Shares [9] on the Exchange. The Shares of the Fund will be offered by the Reality Shares ETF Trust (''Trust''). The Trust will be registered with the Commission as an open-end management investment company.[10] Reality Shares Advisors, LLC will serve as the investment adviser to the Fund (''Adviser''). ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Fund.

B. The Exchange's Description of the Fund

The Exchange has made the following representations concerning the Fund.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72014 (Apr. 24, 2014), 79 FR 24465 (''Notice'').

[4] In Amendment No. 1, the Exchange confirmed the hours of the three trading sessions on the Exchange, clarified the valuation of investments for purposes of calculating net asset value, clarified what information would be available on the Fund's Web site, and provided additional information relating to surveillance with respect to certain assets held by the Fund. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Exchange filed Amendment No. 2 to the proposal to reflect a name change to the Fund and the underlying index. Specifically, the Exchange replaced each reference to ''Reality Shares NASDAQ–100 Isolated Dividend Growth ETF'' in the proposal with ''Reality Shares NASDAQ–100 DIVS Index ETF'' and replaced each reference to ''Reality Shares NASDAQ–100 Isolated Dividend Growth Index'' in the proposal with ''Reality Shares NASDAQ–100 DIVS Index.'' Amendment No. 2 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 72384, 79 FR 35205 (June 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] Index Fund Shares that are issued by an open-end investment company and listed and traded on the Exchange under NASDAQ Rule 5705 seek to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof. *See* Rule 5705(b)(1)(A).

[10] According to the Exchange, the Trust will be registered under the Investment Company Act of 1940 (''1940 Act''). On November 12, 2013, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (''1933 Act'') and under the 1940 Act relating to the Fund, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333–192288 and 811–22911) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. Investment Company Act Release No. 30678 (Aug. 27, 2013) (''Exemptive Order''). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

The Fund will seek long-term capital appreciation by tracking the performance of the Reality Shares NASDAQ–100 DIVS Index (''Index''). The Index was developed and is maintained by Reality Shares, Inc. (''Index Provider'').[11] The Adviser is a wholly-owned subsidiary of the Index Provider. The Index Provider is not registered as a broker-dealer and is not affiliated with any broker-dealer.[12] The Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealer.[13]

1. Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on NASDAQ–100 Index options and options on exchange-traded funds (''ETFs'') designed to track the NASDAQ–100 Index.[14] All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.[15]

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable underlying index or ETF, as well as market expectations regarding the level of dividends to be paid on those indexes or ETFs during the term of the option. The Index constituents, and therefore most of the Fund's portfolio holdings, will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (*i.e.,* options on the NASDAQ–100 Index or the NASDAQ–100 ETF) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call option combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the expected dividends of the securities in the NASDAQ–100 Index while neutralizing the impact of stock price movements. Over time, the Index will increase or decrease in value as the dividend spread between the near-term and long-term option combinations increases or decreases as a result of changing market expectations for dividend growth.

2. Principal Investments of the Fund

The Fund will seek long-term capital appreciation and will seek investment results that, before fees and expenses, generally correspond to the performance of the Index. At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index. A figure of 1.00 would represent perfect correlation. The Fund generally will use a representative sampling investment strategy.

The Fund will buy (*i.e.,* hold a ''long'' position in) and sell (*i.e.,* hold a ''short'' position in) put and call options. The Fund will have a strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter. This is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on a security while minimizing its exposure to changes in the trading price of that security.

The Fund will buy and sell U.S. exchange-listed options on the NASDAQ–100 Index and U.S. exchange-listed options on ETFs designed to track the NASDAQ–100 Index. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ–100 Index and options on ETFs tracking the NASDAQ–100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities.

3. Other Investments of the Fund

While, as described above, at least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index, the Fund may invest up to 20% of the Fund's total assets in other securities and financial instruments, as described below.

The Fund may invest in U.S. exchange-listed futures contracts on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index and may invest in forward contracts on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index. The Fund's use of exchange-listed futures contracts and forward contracts is designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ–100 Index and options on ETFs tracking the NASDAQ–100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may also buy and sell OTC options on the NASDAQ–100 Index and on ETFs designed to track the NASDAQ–100 Index.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index.[16] In a typical swap transaction, one party agrees to make periodic payments to another party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, with the

[11] The Index will be calculated by International Data Corporation, which is not affiliated with the Adviser, the Index Provider, or The NASDAQ OMX Group and which is not a broker-dealer or fund advisor. Rule 5705(b)(5)(A)(i) states that if an index is maintained by a fund advisor or a broker-dealer, the fund advisor or broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index.

[12] The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index.

[13] The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index. The Exchange notes that, in the event (a) the Adviser, any sub-adviser, or the Index Provider becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser, sub-adviser, or Index Provider is a registered broker-dealer or becomes affiliated with a broker-dealer, that entity will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[14] The Index will not directly measure or track actual dividend payments or the actual growth in dividend payments, but will instead track market *expectations* of dividend growth as implied by the prices of the options that make up the Index.

[15] Rule 5705(b)(3).

[16] The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

Fund receiving or paying only the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap transaction, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction, one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations.

The Fund may invest up to 20% of its assets (exclusive of collateral held from securities lending, if any) in exchange-listed equity securities and derivative instruments (specifically, futures contracts, forward contracts, and swap transactions) [17] relating to the Index and its component securities that the Adviser believes will help the Fund track the Index. For example, the Fund may buy and sell ETFs and, to a limited extent, individual large-capitalization equity securities listed and traded on a U.S. national securities exchange.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund's short positions and its investments in swaps, futures contracts, forward contracts, and options based on the NASDAQ–100 Index and ETFs designed to track the NASDAQ–100 Index will be backed by investments in cash, high-quality short-term debt securities, and money-market instruments in an amount equal to the Fund's maximum liability under the applicable position or contract or will otherwise be offset in accordance with Section 18 of the 1940 Act. Short-term debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government Securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements,[18] and bonds that are rated BBB or higher.

In addition to the investments described above, and in a manner consistent with its investment objective, the Fund may invest a limited portion of its net assets in high-quality, short-term debt securities and money market instruments for cash management purposes.[19]

The Fund will attempt to limit counterparty risk in non-cleared swap, forward, and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.[20]

The Exchange represents that the Fund's investments in swaps, futures contracts, forward contracts, and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.[21]

4. Investment Restrictions of the Fund

To the extent the Index concentrates (*i.e.,* holds 25% or more of its total assets) in the securities of a particular industry or group of industries, the Fund will concentrate its investments to approximately the same extent as the Index.

The Fund may hold up to an aggregate amount of 15% of its net assets in assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.[22] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33 1/3% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities.

The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act and intends to qualify for, and to elect treatment as, a separate regulated investment company under Subchapter M of the Internal Revenue Code. The Exchange represents that the Fund's investments will be consistent with its investment objective and will

[17] Where practicable, the Fund intends to invest in swaps cleared through a central clearing house (''Cleared Swaps''). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

[18] The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank, subject to resale at an agreed-upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

[19] The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

[20] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

[21] To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, will enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[22] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

not be used to provide multiple returns of a benchmark or to produce leveraged returns.

II. Proceedings to Determine Whether To Approve or Disapprove SR–NASDAQ–2014–038 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [23] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[24] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [25]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[26]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 26, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 9, 2014.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[27] as modified by Amendment Nos. 1 and 2 to the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. Because the Index is designed to reflect changes in market expectations of future dividend growth, rather than to track actual dividend growth, is the Fund's investment strategy fundamentally based on an assumption that the options markets systemically underprice dividend growth? What are commenters' views regarding whether investors would be able to understand the strategy, risks, potential rewards, assumptions, and expected performance of the Fund's strategy?

2. With respect to the trading of the Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what ways?

3. How closely do commenters think the market price of the Shares will track the Fund's intraday indicative value (''IIV'') or the intraday value of the Index? Are certain of these values likely to be more volatile than others? If so, how would this affect trading in the Shares? Are the Shares likely to trade with a significant premium or discount to IIV? What are commenters' views of how effectively the IIV of the Fund would represent the Fund's portfolio? What are commenters' views of how the Shares' market price, the Fund's IIV, and the intraday value of the Index will relate to one another during times of market stress?

4. Does the liquidity of the long-dated options in which the Fund will invest differ materially from that of the short-dated options in which the Fund will invest? If so, how would that affect the ability of market makers to engage in arbitrage or to hedge their positions while making a market in the Shares? Would the liquidity characteristics of the Index components or of the options in the Fund's portfolio affect the calculation of the Index value, the calculation of the Fund's IIV, the calculation of the Fund's NAV, or the ability of market makers or other market participants to value the Shares? If so, how?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2014–038 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 Numbers SR–NASDAQ–2014–038. 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 these filings 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

[23] 15 U.S.C. 78s(b)(2)(B).

[24] *Id.*

[25] 15 U.S.C. 78f(b)(5).

[26] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[27] *See supra* note 3.

should refer to File Number SR–NASDAQ–2014–038 and should be submitted on or before August 26, 2014. Rebuttal comments should be submitted by September 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18389 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72704; File No. SR–CBOE–2014–060

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend Rule 24.19

July 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rule related to Multi-Class Broad-Based Index Option Spread Orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 24.19. This Rule allows Trading Permit Holders (''TPHs'') to execute Multi-Class Broad-Based Index Option Spread Orders (''Multi-Class Spread Orders'') that meet certain qualifying criteria. Currently, not all Multi-Class Spread Orders may be entered electronically due to systems constraints. The Exchange is in the process of modifying its electronic order-entry systems to provide for the electronic entry and validation of all Multi-Class Spread Orders to the floor of the Exchange. This will provide for an enhanced audit trail that will better allow regulatory oversight in connection with the provisions of Rule 24.19. For the Exchange's systems to determine that two separate legs are part of the same Multi-Class Spread Order (allowing for treatment as a Multi-Class Spread Order), both legs must be entered together on a single order ticket. As such, the Exchange proposes to amend Rule 24.19 to state that ''Multi-Class Spread Orders must be entered on a single order ticket at time of systemization to be eligible for the procedures and relief set out in this Rule.''[3] The Multi-Class Spread Order type will enforce the permitted combinations of options covered by Rule 24.19. The Exchange will not accept Multi-Class Spread Orders with invalid combinations. While the proposed rule change allows for all Multi-Class Spread Orders to be entered electronically, all Multi-Class Spread Orders will still be executed in open outcry on the Exchange's trading floor.

Because the current method for representing and executing Multi-Class Spread Orders is manual and must occur only in open outcry, the current language states that a Multi-Class Spread Order may be represented at the trading station of either Broad-Based Option comprising the order, and also requires that the TPH initiating the order in the trading crowd to contact an Order Book Official (''OBO''), Designated Primary Market-Maker (''DPM''), or appropriate Exchange staff, as applicable, at the other trading station to have a notice of such order disseminated to the other trading crowd. The proposed rule change will require that a Multi-Class Spread Order be represented at the primary trading station, and states that the TPH representing the order must contact the DPM or Exchange staff[4] (as applicable) at the other trading station in order to provide notice of such order for dissemination to the other trading crowd. Each Broad-Based Index Option has a trading station. The primary trading station is the first trading station at which the Multi-Class Spread Order is represented. The floor broker representing the Multi-Class Spread Order may determine which trading station should be the primary trading station. The current rule states that notice of a Multi-Class Spread order ''shall be disseminated by the Recipient who shall verbalize the terms of the order to the other trading crowd.'' However, the Exchange proposes to replace the word ''verbalize'' with the word ''announce'', as the Exchange is currently contemplating changes that will allow such notice to be posted on screens electronically to the other trading crowd (which could be a more efficient method of posting such order information). This ensures that all market participants at both physical trading locations are aware of the terms of the order being processed.

The proposed rule change will enhance and improve the process of sending Multi-Class Spread Orders to the floor of the Exchange, as well as enhance the Exchange's audit trail with respect to such orders. No later than 90 days following the effective date of the proposed rule change, the Exchange will announce to TPHs via Regulatory Circular the implementation date by which TPHs must be in compliance with the changes described herein. The implementation date will be no later than 180 days following the effective date of the proposed rule change, and will be at least 30 days following the release of the abovementioned Regulatory Circular (in order to give TPHs ample time to come into

[28] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the substance of this proposal was published in a prior proposal which was published for the entire 21 day comment period, and no comments were received. That prior proposal provided for several changes to Rule 24.19; however, this proposal specifically relates to the electronic entry and validation of Multi-Class Spread Orders and can be considered and approved without reference to the other proposed changes in the prior proposal. *See* Securities Exchange Act Release No. 71872 (April 4, 2014), 79 FR 19940 (April 10, 2014) (SR–CBOE–2014–026).

[4] The Exchange proposes to remove the reference to contacting an OBO, as the Exchange no longer has OBOs.

compliance with the changes described herein).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that automating the Multi-Class Spread Order creation process for all Multi-Class Spread Orders serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system by providing market participants the ability to route Multi-Class Spread Orders to the Exchange electronically. Further, enhancing the audit trail with respect to Multi-Class Spread Orders promotes transparency and aids in surveillance, thereby protecting investors.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. Enhancing the audit trail with respect to Multi-Class Spread Orders will allow the Exchange to better enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that automating the Multi-Class Spread Order creation process for all Multi-Class Spread Orders promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Multi-Class Spread Orders are available to all market participants through CBOE TPHs. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, again, Multi-Class Spread Orders are available to all market participants through CBOE TPHs, which makes CBOE a more effective marketplace. Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE more attractive to market participants at other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of the proposed rule change. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–060 and should be submitted on or before August 20, 2014.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78f(b)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill.

Deputy Secretary.

[FR Doc. 2014–18379 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72721; File No. SR–NYSE–2014–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List Related to Co-Location Services

July 30, 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 July 23, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 amend its Price List related to co-location services. The Exchange proposes to implement the fee change effective July 28, 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 its Price List related to co-location services. The Exchange proposes to implement the fee change effective July 28, 2014.[4] The proposed change is intended to, among other things, streamline the offerings available to Users in the data center, make the Price List easier to understand and administer, and eliminate references to services that would be discontinued because they are no longer utilized by Users.[5]

Cages

A User is able to purchase a cage to house its cabinets within the data center. A cage would typically be purchased by a User that has several cabinets within the data center and that wishes to arrange its cabinets contiguously while also enhancing privacy around its cabinets. The Exchange charges fees for cages based on the size of the cage, which directly corresponds to the number of cabinets housed therein.[6] The Exchange proposes to amend the Price List to reflect that a User must have at least two cabinets in the data center to purchase a cage. Existing pricing for cages would not change.

LCN CSP Access

The Exchange's ''Liquidity Center Network'' (''LCN'') is a local area network that is available in the data center. A User is currently able to act as a content service provider (a ''CSP'' User) and deliver services to another User in the data center (a ''Subscribing'' User).[7] These services could include, for example, order routing/brokerage services and/or data delivery services. LCN CSP connections allow the CSP User to send data to, and communicate with, all the properly authorized Subscribing Users at once, via a specific, dedicated LCN connection (an ''LCN CSP'' connection). The Price List includes related pricing.

The Exchange proposes to discontinue the one gigabit (''Gb'') LCN CSP connection offering, which is no longer utilized by Users, and to remove references to related pricing from the Price List. The 10 Gb LCN CSP connection offering would remain available, as would the related pricing in the Price List. Also, a CSP User would remain able to deliver its services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from three ''bundled'' connectivity options, at various bandwidths (*i.e.,* one, 10 and 40 Gb), when connecting to the data center. The Exchange proposes to discontinue ''bundled'' connectivity options that are no longer utilized by Users and to remove references to related pricing from the Price List. In particular, the Exchange would discontinue (1) ''Option 2'' completely, (2) the 10 Gb LX and 40 Gb bandwidth ''bundles'' under ''Option 1,'' and (3) the one Gb, 10 Gb LX and 40 Gb ''bundles'' under Option 3. Current ''Option 3'' would be renumbered as ''Option 2.''

Initial Install Services

When a User selects a new cabinet in the data center it is charged the ''Initial Install Services'' fee ($800 per dedicated cabinet or $400 for per eight-rack unit in a partial cabinet), which includes initial racking of equipment in the cabinet, provision of a certain number of cables (10 per dedicated cabinet or five per eight-rack unit in a partial cabinet), and a certain number of hours of labor (four per dedicated cabinet or two per eight-rack unit in a partial cabinet).[8]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Securities and Exchange Commission (''Commission'') initially approved the Exchange's co-location services in Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (the ''Original Co-location Approval''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, the term ''User'' includes (i) member organizations, as that term is defined in NYSE Rule 2(b); (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B); and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. *See, e.g.,* Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR–NYSE–2011–53). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18).

[7] *Id.*

[8] The Exchange explained the Initial Install Services fee when it introduced partial cabinet offerings. *See* Securities Exchange Act Release No.

The Exchange proposes that the Initial Install Services would no longer limit the number of cables that are included and that references to those limits would be removed from the Price List. A User would therefore be provided with the number of cables required to provision the cabinet for initial installation. The existing limit on the number of labor hours included would remain.

Hot Hands and Related Services

The Exchange currently offers a ''Hot Hands Service,'' which allows Users to use on-site data center personnel to maintain User equipment.[9] The applicable fee in the Price List for Hot Hands Service is $200 per hour if scheduled during normal business hours (*i.e.,* on non-Exchange holidays, Monday to Friday, 9 a.m. to 5 p.m.) and if scheduled at least one day in advance. A higher fee applies if, for example, the Hot Hands Service is scheduled during extended business hours (*i.e.,* Monday to Friday, 5 p.m. to 9 a.m., Exchange holidays, and weekends, if scheduled at least one day in advance) or if the Hot Hands Service is ''expedited'' (*i.e.,* if not scheduled at least one day in advance).

The Exchange proposes to consolidate all the current categories of Hot Hands Service under a single Hot Hands Service category and charge a single rate of $100 per half hour. The proposed $100 per half hour charge would be equivalent to the existing $200 per hour rate in the Price List, except that it would reflect a charge for Hot Hands Service in half hour increments. The other existing rates that currently apply to Hot Hands Service during extended business hours or for expedited Hot Hands Service would be discontinued.

Several other related services described in the Price List are available to Users, for which the same $200 per hour rate applies as is currently applicable for the standard Hot Hands Service, as follows:[10]

- ''Rack and Stack''
- Installation of one server in a User's cabinet. This service encompasses handling, unpacking, tagging, and installation of the server as well as one network connection within the User's rack.
- ''Install and Document Cable''
- Labor charges to install and document the fitting of cable(s) in a User's cabinet(s) in excess of the cables included in the cabinet Initial Install Services fee (as described above); and
- ''Technician Support Service—Non Emergency''
- Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. One prior day's notice is required.

The Exchange proposes to perform these services under the single Hot Hands Service category proposed above, at the proposed Hot Hands Service rate of $100 per half hour. Because of the elimination of the limit on the number of cables included with the Initial Install Services fee, the ''Install and Document Cable'' service that would be subsumed into the Hot Hands Service fee would apply to additional labor hours needed to complete an initial install above the amount of time included in the Initial Install Services fee (*i.e.,* greater than four hours per dedicated cabinet or two hours per eight-rack unit in a partial cabinet).

Several other related services described in the Price List are available to Users in the data center for which the service fee is different than the current $200 per hour Hot Hands Service fee, as follows:[11]

- ''Power Recycling''—$50 per reset.
- Reboot of power on one server or switch as well as observing and reporting on the status of the reboot back to the User.
- ''Equipment Maintenance Call Escalation''—$100 per call.
- Hardware maintenance-break fix services.
- ''Technician Support Service—Emergency''—$325 per hour.
- Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Two hour notice is required.

The Exchange also proposes to perform these services under the single Hot Hands Service category proposed above, similarly at the proposed Hot Hands Service rate of $100 per half hour.

Obsolete Dates

Certain services in the data center that are described in the Price List identify introductory dates during which discounted pricing had been in effect. These dates have passed. The Exchange proposes to eliminate the obsolete references to these dates. This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[12] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[13]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users 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,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of

71122 (December 18, 2013), 78 FR 77739 (December 24, 2013) (SR–NYSE–2013–81).

[9] *See* Original Co-location Approval.

[10] *Id.*

[11] *Id.*

[12] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[13] *See* SR–NYSE–2013–59, *supra* note 5 at 51766. The Exchange's affiliates have also submitted the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2014–61 and SR–NYSEArca–2014–81.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

such services. The Exchange believes that the proposed change is consistent with the Act because it would permit the Exchange to streamline the offerings available to Users in the data center, make the Price List easier to understand and administer, and eliminate references in the Price List to services that would be discontinued because they are no longer utilized by Users.

The Exchange believes that it is reasonable to require that a User have a minimum of two cabinets in the data center in order to purchase a cage because a User with one cabinet typically would not be interested in placing a cage around a single cabinet, due to the lack of necessity and the added cost that the User would incur. The Exchange also believes that this is reasonable because the existing monthly cage fees reflect the opportunity cost to the Exchange of giving up floor space in the data center for the cage's physical footprint and the value of such space to the User, in that such floor space otherwise could be utilized for additional cabinets for the same or other Users or other Exchange purposes. Placing just a single cabinet in a cage would not be consistent with this opportunity cost. However, existing pricing for cages would not change, and requiring a minimum of two cabinets also would not result in a price increase for a cage, because the price for the cage would not increase until a User's number of cabinets reaches the next pricing tier for cages (*i.e.,* 15–28 cabinets).

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Price List because the resulting Price List would be more streamlined and easier to read, understand and administer. This would also contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure (*i.e.,* hardware, software, etc.).

The Exchange believes that it is reasonable to eliminate the limit on the number of cables that are included in the Initial Install Services fee because it would assist Users in meeting the growing needs of their business operations. Some Users require fewer cables than the current limits, while other Users require more. However, the Exchange generally anticipates that, on average, these amounts would be consistent with the amounts currently specified in the Price List. The existing limits on labor hours would remain. Therefore, a User whose cable requirements result in labor hours that exceed the amount included in the Initial Install Services fee would be required to utilize Hot Hands Service and pay the corresponding fee.

The Exchange believes that it is reasonable to charge a single rate of $100 per half hour for Hot Hands Service, including for Hot Hands Service during extended business hours and for expedited Hot Hands Service. The proposed $100 per half hour charge would be equivalent to the existing $200 per hour rate in the Price List, except that it would reflect billing for Hot Hands Service in half hour increments. This is reasonable because it would consolidate several similar services under one category with a single applicable rate, thereby eliminating the need for Users to identify the type of Hot Hands Service they are requesting, the timing for the request, or for the Exchange to monitor and record the initiation time of the corresponding performance of the service. The Exchange believes that charging $100 per half hour is reasonable because it would represent an overall decrease compared to the several, current Hot Hands Service categories (*i.e.,* during extended business hours and for expedited Hot Hands Service).

The Exchange believes that it is reasonable to perform other related services under the Hot Hands Service category, for which the same $200 per hour rate currently applies for the standard Hot Hands Service, because this would simplify the descriptions of the various categories of services available to Users. However, despite the proposed change, the applicable rate would remain consistent with the current rate in the Price List (*i.e.,* $100 per half hour instead of $200 per full hour), as would the actual performance of these services, because the data center personnel would be the same as the personnel performing Hot Hands Service.

The Exchange also believes that it is reasonable to perform various other related services under the proposed single Hot Hands Service category, at the proposed rate of $100 per half hour, despite different fees currently applying to such services. This would contribute to further simplifying the descriptions of the various categories of services available to Users and make the Price List easier to understand and administer. The applicable base rate would decrease for Technician Support Service—Emergency. The current premium that is factored into the $325 per hour rate to account for the ''emergency'' nature of the service request would be eliminated, which is reasonable because it would address the needs of Users to have their requirements attended to in the data center via the Hot Hands Service, even when time is of the essence for resolution. In contrast, the base rate for ''Power Recycling'' would increase from $50 per reset to $100 per half hour. The Exchange believes that this is reasonable because several of the other services in the data center to which Users have access would decrease in cost as a result of this proposal (*i.e.,* Hot Hands Service during extended business hours and for expedited Hot Hands Service as well as the Technician Support Service—Emergency). On balance, therefore, rates charged to Users would decrease as a result of the proposed change, even if a User pays a slightly higher fee for ''Power Recycling'' under the single Hot Hands Service category. Also, while the current rate in the Price List for ''Equipment Maintenance Call Escalation'' is $100 per call, this service may only take a half hour to complete, in which case the resulting fee charged to a User may be comparable to the current base rate in the Price List. Despite the proposed change, the actual performance of these services would remain the same, because the data center personnel would be the same as the personnel performing Hot Hands Service.

The Exchange believes that it is reasonable to eliminate references in the Price List to dates that have already passed because these references are obsolete and no longer have an impact on pricing.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users).

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees,

requirements, terms and conditions established from time to time by the Exchange.

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,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address a competitive issue with other exchanges that offer co-location or related services, or competitive issues between Users of these services in the data center, but rather to streamline the offerings available to Users in the data center and eliminate references to services that are no longer utilized by Users, thereby making the Price List easier to understand and administer.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] 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)[19] 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–2014–37 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–2014–37. 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 20549–1090, 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 Web site viewing and printing 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–NYSE–2014–37 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18435 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72701; File No. SR–ICC–2014–11]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Revise Rules To Provide for the 2014 ISDA Definitions

July 29, 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 July 24, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICC. 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 principal purpose of the proposed change is to amend ICC rules to incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (''ISDA'') on February 21, 2014 (the ''2014 ISDA Definitions''). Consistent with the approach being taken throughout the CDS market, the industry standard 2014 ISDA Definitions will be applicable to certain products cleared by ICC beginning on September 22, 2014.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ICC submits proposed amendments to the ICC Clearing Rules (the ''ICC Rules'') to incorporate references to the 2014 ISDA Definitions to be effective by the industry implementation date of September 22, 2014. ICC principally proposes to (i) revise the ICC Rules to make proper distinctions between the 2014 ISDA Definitions and the ISDA Credit Derivatives Definitions published previously in 2003 (as amended in 2009, the ''2003 ISDA Definitions'') and related documentation; and (ii) make conforming changes throughout the ICC Rules to reference provisions from the proper ISDA Definitions. ICC also submits the ICC Restructuring Procedures revised to reflect proper distinctions between the 2003 ISDA Definitions and the 2014 ISDA Definitions. Finally, the ICC Risk Management Framework has been revised to reflect appropriate portfolio treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions.

As described by ISDA, the 2014 Definitions make a number of changes from the 2003 ISDA Definitions to the standard terms for CDS Contracts, including (i) introduction of new terms applicable to credit events involving financial reference entities and settlement of such credit events, (ii) introduction of new terms applicable to credit events involving sovereign reference entities and settlement of such credit events, (iii) implementation of standard reference obligations applicable to certain reference entities, and (iv) various other improvements and drafting updates that reflect market experience and developments since the 2009 amendments to the 2003 ISDA Definitions.

Commencing on the implementation date of September 22, 2014, ICC intends to accept for clearing new transactions in eligible contracts that reference the 2014 ISDA Definitions. In addition, the amendments will provide for the conversion of certain existing contracts (so-called ''Converting Contracts'') currently based on the 2003 ISDA Definitions into contracts based on the 2014 ISDA Definitions. (This approach is consistent with expected industry practice for similar contracts not cleared by ICC, which will be subject to a multilateral amendment ''protocol'' sponsored by ISDA.) For contracts that are not Converting Contracts, ICC expects to continue to accept for clearing both new transactions referencing the 2014 ISDA Definitions and new transactions referencing the 2003 ISDA Definitions (and such contracts based on different definitions will not be fungible). The ISDA protocol implementation has been developed with a high level of industry involvement and consultation. ICC understands, through industry consensus, that ICC Participants plan to adhere to the ISDA protocol and would desire ICC to convert certain contracts cleared at ICC into contracts based on the 2014 ISDA Definitions, consistent with the ISDA protocol. Therefore, in an effort to achieve consistency across the CDS marketplace, ICC's implementation plan is intended to be fully consistent with the planned ISDA protocol implementation. ICC will publish on its Web site a list of Converting Contracts, which is expected to be the same as the list of contracts subject to the ISDA protocol. (Most ICC Contracts will be Converting Contracts with certain exceptions including CDS on sovereigns and certain financial reference entities.)

ICC proposes to amend Chapters 20, 21, 22 and 26 of the ICC Rules and the ICC Restructuring Procedures and ICC Risk Management Framework to provide for the 2014 ISDA Definitions. All capitalized terms not defined herein are defined in the ICC Rules. Each of these changes is described in detail as follows.

Chapter 20 of the ICC Rules (Credit Default Swaps), has been amended to provide new definitions for ''2003/2014 Changeover Effective Date,'' ''2003 Definitions,'' ''2003-Type CDS Contract,'' ''2014 Definitions,'' ''2014-Type CDS Contract,'' ''Applicable Credit Derivatives Definitions'' and ''Converting Contacts.'' The new definitions accommodate the 2014 ISDA Definitions and provide terms that allow for distinctions between the 2014 ISDA Definitions and the 2003 ISDA Definitions and have been applied throughout the ICC Rules. Additionally, the references in the definitions of ''CDS Restructuring Rules'' and ''DC Rules'' are updated. Rule 20–103 ''Interpretation Relating to Index CDS Contracts'' is added to clarify that the determination of whether the 2003 or 2014 ISDA Definitions applies may be made separately for each component transaction in the index. Finally, Rule 20–617(g) is revised to remove a cross-reference to the definition of ''SR Auction'' because SR Auction is defined as appropriate in multiple Subchapters, specifically, 26B, 26D and 26G.

Chapter 21 (Regional CDS Committees and Dispute Resolution Procedures) and Chapter 22 (CDS Physical Settlement) of the ICC Rules have been revised to include references, as appropriate, to the 2014 ISDA Definitions as well as the current 2003 ISDA Definitions. Within Chapter 21, ICC Rules 2101–02(a), (c), (d), (e), (f), 2103–02(c) and 2106–04 are updated to make reference to the parallel provisions of the 2014 ISDA Definitions in conjunction with the existing references to specific provisions of the 2003 ISDA Definitions. In addition, those rules are updated to incorporate certain new concepts in the 2014 ISDA Definitions, particularly the concept of Asset Package Credit Events for financial and sovereign reference entities. Such events may result in the delivery of a specified asset package in lieu of an otherwise qualifying deliverable obligation, and the revised rules provide for certain decisions that may need to be taken with respect to such asset packages in such circumstances. In Chapter 22, ICC Rules 2202(d) and 2203(a) also are updated to make parallel reference to the provisions of the 2014 ISDA Definitions in conjunction with the existing references to specific provisions of the 2003 ISDA Definitions.

Chapter 26 of the ICC Rules (Cleared CDS Products) is revised as applicable to implement the definitional changes in Chapter 20 of the ICC Rules and the 2014 ISDA Definitions. These changes include clarification of reference to provisions within the DC Rules, clarification as to whether previous references to ''Credit Derivatives Definitions'' are to the 2003 ISDA Definitions or the 2014 ISDA Definitions and the addition of provisions consistent with the 2014 ISDA Definitions. The revisions to Chapter 26 are intended to ensure that all ICC Cleared CDS Products are treated consistently with the Applicable ISDA Definitions in effect from time to time, as is in practice today.

Subchapter 26A (CDX Untranched North American IG/HY/XO) is revised as follows. In ICC Rule 26A–102 (Definitions), the definition of ''CDX.NA

Untranched Terms Supplement'' is updated to include a reference to the new ''CDX Untranched Transactions Standard Terms Supplement'' expected to be published by Markit North America, Inc. on or about September 20, 2014 to incorporate the 2014 ISDA Definitions, in addition to the existing references to the CDX Untranched Standard Terms Supplements published on March 20, 2008 and January 31, 2011. Additionally in ICC Rule 26A–102 (Definitions), the definition of ''List of Eligible CDX.NA Untranched Indexes'' is revised in part (e) to state that the List of Eligible CDX.NA Untranched Indexes will specify the Applicable Credit Derivatives Definitions for each component of the Index, if applicable. ICC Rule 26A–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) is revised in part (a) to add parallel references to Successor determinations under the 2014 ISDA Definitions and in part (d) to provide that CDX.NA Untranched Contracts that are Converting Contracts will be deemed amended as of the 2003/2014 Changeover Date to reference the updated CDX Untranched Standard Terms Supplement. ICC Rule 26A–317 (Terms of CDX.NA Untranched Contracts) is revised to add references to provisions of the proper ISDA Definitions and Relevant CDX Untranched Terms Supplement versions for the CDX Untranched Contracts that ICC clears. Corresponding changes to provision numbering are made as necessary. Specifically, ICC Rule 26A–317(a) reorganizes and consolidates existing provisions that apply to each CDX.NA Untranched Contract or component thereof to which the 2003 ISDA Definitions apply. ICC Rule 26A–317(a)(ix) was previously 26A–317(j) and has been reproduced with amended reference to the 2003 ISDA Definitions and the correct provisions within the 2003 ISDA Definitions. Correspondingly, ICC Rule 26A–317(b) is added to the ICC Rules to provide analogous terms that apply to each CDX.NA Untranched Contract or component thereof to which the 2014 ISDA Definitions apply. ICC Rule 26A–317(c) was previously the first sentence of 26A–317(i) and is unchanged and applies consistently to each CDX.NA Untranched Contract (whether under the 2003 or 2014 ISDA Definitions). ICC Rule 26A–317(d) is renumbered and the reference to the CDX.NA Untranched Terms Supplement is generalized, but otherwise remains unchanged.

Subchapter 26B (Standard North American Corporate (''SNAC'') Single Name) is revised as follows: In ICC Rule 26B–102 (Definitions), the definitions of ''Eligible SNAC Reference Obligations,'' ''List of Eligible SNAC Reference Entities'' and ''SNAC Contract Reference Obligations'' are updated to include reference to the Applicable Credit Derivatives Definitions and to provide for the use of Standard Reference Obligations, Financial Reference Entity Terms and eligible Seniority Levels under the 2014, ISDA Definitions, where applicable. The restrictions on ''self-referencing'' transactions in ICC Rules 26B–203 (Restriction on Activity) and 26B–206 (Notices Required of Participants with Respect to SNAC Contracts) are revised to cover, in addition to transactions referencing CDS Participants, also transactions referencing Non-Participant Parties for whom such CDS Participant is acting. ICC Rule 26B–309 (Acceptance of SNAC Contracts by ICE Clear Credit) is revised in part (b)(iii) to add ''Relevant'' to the definition of Restructuring Credit Event (reflecting the use of that defined term in Subchapter 26E of the ICC Rules) and in part (e) to address relevant successor or other events under both 2003 and 2014-Type CDS Contracts. ICC Rule 26B–315 (Terms of the Cleared SNAC Contract) is revised to provide reference to provisions of the proper ISDA Definitions, and corresponding changes to provision numbering are made as necessary. Specifically, ICC Rule 26B–315(d) reorganizes and consolidates existing provisions that apply to each SNAC Contract to which the 2003 ISDA Definitions apply. Correspondingly, ICC Rule 26B–315(e) is added to the ICC Rules to provide analogous provisions that apply to each SNAC Contract to which the 2014 ISDA Definitions apply. ICC Rule 26B–315(f) was previously the first sentence of 26B–315(h) and is unchanged (and applies to both SNAC Contracts under both the 2003 and 2014 ISDA Definitions). ICC Rule 26B–315(g) is revised to refer to the Applicable Credit Derivatives Definitions, as appropriate, including, in the case of 2014-Type CDS Contracts, any supplemental or additional provisions or Financial Reference Entity Terms specified as applicable in the List of Eligible SNAC Reference Entities. ICC Rule 26B–616 (Contract Modification) is revised in part (a) to provide for successors to SNAC Contracts and Standard Reference Obligations, as applicable under the ISDA Definitions, and part (b) is added to provide that SNAC Contracts that are Converting Contracts will be deemed amended as of the 2003/2014 Changeover Effective Date to be 2014-Type CDS Contracts.

Subchapter 26C (CDX Untranched Emerging Markets) is revised as follows: In ICC Rule 26C–102 (Definitions), the definition of ''CDX.EM Untranched Terms Supplement'' is updated to include a reference to the new ''CDX Emerging Markets Untranched Transactions Standard Terms Supplement'' expected to be published by Markit North America, Inc. on or about September 20, 2014 to incorporate the 2014 ISDA Definitions, in addition to the existing reference to the CDX.EM Untranched Standard Terms Supplement published on January 31, 2011. Additionally in ICC Rule 26C–102 (Definitions), the definition of ''List of Eligible CDX.EM Untranched Indexes'' is revised in part (e) to state that the List of Eligible CDX.EM Untranched Indexes will specify reference to the Applicable Credit Derivatives Definitions for each component of the Index, if applicable. ICC Rule 26C–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) is revised in part (a) to add parallel references to Successor determinations under the 2014 ISDA Definitions and in part (d) to provide that CDX.EM Untranched Contracts that are Converting Contracts will be deemed amended as of the 2003/2014 Changeover Date to reference the updated CDX.EM Untranched Terms Supplement. ICC Rule 26C–317 (Terms of CDX.EM Untranched Contracts) is revised to add references to provisions of the proper ISDA Definitions and Relevant CDX.EM Untranched Terms Supplement versions for the CDX.EM Untranched Contracts that ICC clears. Corresponding changes to provision numbering are made as necessary. Specifically, ICC Rule 26C–317(a) reorganizes and consolidates existing provisions that apply to each CDX.EM Untranched Contract or component thereof to which the 2003 ISDA Definitions apply. Correspondingly, ICC Rule 26C–317(b) is added to the ICC Rules to provide analogous terms that apply to each CDX.EM Untranched Contract or component thereof to which the 2014 ISDA Definitions apply. ICC Rule 26C–317(c) was previously the first sentence of 26C–317(g) and is unchanged and applies consistently to each CDX.NA Untranched Contract. ICC Rule 26C–317(d) was previously the first sentence of 26C–317(i) and is generalized to apply consistently to each CDX.EM Untranched Contract (whether under the 2003 or 2014 ISDA Definitions). ICC Rule 26C–317(e) is

generalized to apply to both the 2003 and 2014 ISDA Definitions with the same effect of stating that the Reference Obligation for a Restructured Entity will be specified by ICC following consultation with the ICC Risk Committee.

Subchapter 26D (Standard Emerging Sovereign (''SES'') Single Name) is revised as follows. In ICC Rule 26D–102 (Definitions), the definition of ''Eligible SES Reference Entities'' is revised to correct a typo and correctly identify the reference entity for a cleared product as the Bolivarian Republic of Venezuela and the definitions of ''Eligible SES Reference Obligations,'' ''List of Eligible SES Reference Entities'' and ''SES Contract Reference Obligations'' are updated to include reference to the Applicable Credit Derivatives Definitions and to provide for the use of a Standard Reference Obligation under the 2014 ISDA Definitions, where applicable. The restrictions on ''self-referencing'' transactions in ICC Rules 26D–203 (Restriction on Activity) and 26D–206 (Notices Required of Participants with Respect to SES Contracts) are revised to cover, in addition to transactions referencing CDS Participants, also transactions referencing Non-Participant Parties for whom such CDS Participant is acting. ICC Rule 26D–309 (Acceptance of SES Contracts by ICE Clear Credit) is revised in part (b)(iii) to add ''Relevant'' to the definition of Restructuring Credit Event (reflecting the use of that defined term in Subchapter 26E of the ICC Rules), in part (c) to, in addition to CDS Participant, also provide for Non-Participant Parties for whom such CDS Participant is acting and in part (e) to address relevant successor or other events under both 2003 and 2014-Type CDS Contracts. ICC Rule 26D–315 (Terms of the Cleared SES Contract) is revised to provide reference to provisions of the proper ISDA Definitions, and corresponding changes to provision numbering are made as necessary. Specifically, ICC Rule 26D–315(d) reorganizes and consolidates existing provisions that apply to each SES Contract to which the 2003 ISDA Definitions apply. Correspondingly, ICC Rule 26D–315(e) is added to the ICC Rules to provide analogous provisions that apply to each SES Contract to which the 2014 ISDA Definitions apply. ICC Rule 26D–315(f) was previously the first sentence of 26D–315(h) and is unchanged (and applies to both 2003 and 2014-Type CDS Contracts. ICC Rule 26D–315(g) remains unchanged; the previous reference was 26D–315(k). ICC Rule 26D–315(h) is revised to refer to the Applicable Credit Derivatives Definitions, as appropriate. ICC Rule 26D–616 (Contract Modification) is revised in part (a) to provide for successors to SES Contracts and Standard Reference Obligations, as applicable under the relevant ISDA Definitions, and part (b) is added to provide that SES Contracts that are Converting Contracts will be deemed amended as of the 2003/2014 Changeover Effective Date to be 2014-Type CDS Contracts.

Subchapter 26E is updated to provide for the differences in the treatment of Relevant Restructuring Contracts under the 2003 ISDA Definitions and 2014 ISDA Definitions. Specifically, in ICC Rule 26E–102 (Definitions) the definitions of ''Matched Restructuring Pair,'' ''Relevant Restructuring Contract,'' ''Relevant Restructuring Credit Event'' and ''Restructuring CDS Contract'' are updated to allow for application of either the 2003 ISDA Definitions or the 2014 ISDA Definitions as relevant. Additionally, the definition of ''Triggered Restructuring CDS Contract'' as well as ICC Rules 26E–104(a) and (b) are updated to include provisions consistent with the 2014 ISDA Definitions.

Subchapter 26F (iTraxx Europe) is revised as follows: In ICC Rule 26F–102 (Definitions), the definition of ''iTraxx Europe Untranched Terms Supplement'' is updated to include reference to the new ''iTraxx Europe Untranched Standard Terms Supplement'' expected to be published by Markit North America, Inc. on or about September, 20 2014 to incorporate the 2014 ISDA Definitions, in addition to the existing reference to the iTraxx Europe Untranched Standard Terms Supplement published on November 23, 2009. Additionally in ICC Rule 26F–102 (Definitions), the definition of ''List of Eligible iTraxx Europe Untranched Indexes'' is revised in part (e) to state that the List of Eligible iTraxx Europe Untranched Indexes will include reference to the Applicable Credit Derivatives Definitions for each component of the Index, if applicable. ICC Rule 26F–309 (Acceptance of iTraxx Europe Untranched Contracts by ICE Clear Credit) is revised to correct a typo from ''clauses'' to ''clause.'' ICC Rule 26F–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) is revised in part (a) to add parallel references to Successor determinations under the 2014 ISDA Definitions and in part (d) to provide that iTraxx Europe Untranched Contracts that are Converting Contracts will be deemed amended as of the 2003/2014 Changeover Date to reference the updated iTraxx Europe Untranched Terms Supplement. ICC Rule 26F–317 (Terms of iTraxx Europe Untranched Contracts) is revised to add references to provisions of the proper ISDA Definitions and Relevant iTraxx Europe Untranched Terms Supplement versions for the iTraxx Europe Untranched Contracts that ICC clears. Corresponding changes to provision numbering are made as necessary. Specifically, ICC Rule 26F–317(a) reorganizes and consolidates existing provisions that apply to each iTraxx Europe Untranched Contract or component thereof to which the 2003 ISDA Definitions apply. Correspondingly, ICC Rule 26F–317(b) is added to the ICC Rules to provide analogous terms that apply to each iTraxx Europe Untranched Contract or component thereof to which the 2014 ISDA Definitions apply. ICC Rule 26F–317(c) was previously the first sentence of ICC Rule 26F–317(f) and is unchanged and applies consistently to each iTraxx Europe Untranched Contract (whether under the 2003 or 2014 ISDA Definitions). ICC Rule 26F–317(d), which provides for the determination of a Reference Obligation for a Restructured Entity, is revised slightly to accommodate a Standard Reference Obligation, if applicable. ICC Rule 26F–317(e)(vi) is generalized to provide for the Relevant iTraxx Europe Untranched Terms Supplement.

Subchapter 26G (Standard European Corporate (''STEC'') Single Name) is revised throughout to change ''SDEC'' to ''STEC'' to follow the industry standard acronym, and as follows: In ICC Rule 26G–102 (Definitions), the definitions of ''Eligible STEC Reference Obligations,'' ''List of Eligible STEC Reference Entities'' and ''STEC Contract Reference Obligations'' are updated to include reference to the Applicable Credit Derivatives Definitions and to provide for the use of a Standard Reference Obligation under the 2014 ISDA Definitions and eligible Seniority Levels, where applicable. The restrictions on ''self-referencing'' transactions in ICC Rules 26G–203 (Restriction on Activity) and 26G–206 (Notices Required of Participants with Respect to STEC Contracts) are revised to cover, in addition to transactions referencing a CDS Participant, also transactions referencing Non-Participant Parties for whom such CDS Participant is acting. ICC Rule 26G–309 (Acceptance of STEC Contracts by ICE Clear Credit) is revised in part (b)(iii) to add ''Relevant'' to the definition of

Restructuring Credit Event (reflecting the use of that defined term in Subchapter 26E of the ICC Rules) and in part (e) to address relevant successor or other events under both 2003 and 2014-Type CDS Contracts. ICC Rule 26G–315 (Terms of the Cleared STEC Contract) is revised to provide reference to provisions of the proper ISDA Definitions, and corresponding changes to provision numbering are made as necessary. Specifically, ICC Rule 26G–315(d) reorganizes and consolidates existing provisions that apply to each STEC Contract to which the 2003 ISDA Definitions apply. Correspondingly, ICC Rule 26G–315(e) is added to the ICC Rules to provide analogous terms that apply to each STEC Contract to which the 2014 ISDA Definitions apply. ICC Rule 26G–315(f) was previously the first sentence of 26G–315(h) and is unchanged (and applies to both 2003 and 2014-Type CDS Contracts). ICC Rule 26G–315(g) remains unchanged; the previous reference was 26G–315(k). ICC Rule 26G–315(h) is revised to refer to the Applicable Credit Derivatives Definitions and eligible Seniority Level, as appropriate. ICC Rule 26G–616 (Contract Modification) is revised in part (a) to provide for successors to STEC Contracts and Standard Reference Obligations, as applicable under the relevant ISDA Definitions, and part (b) is added to provide that STEC Contracts that are Converting Contracts will be deemed amended as of the 2003/2014 Changeover Effective Date to be 2014-Type CDS Contracts.

Subchapter 26H (Standard European Financial Corporate (''STEFC'') Single Name) is added to the ICC Rules to provide for the clearance of STEFC Single Names. Such contracts will be subject only to the 2014 ISDA Definitions. STEFC Contracts have similar terms to the Standard European Corporate Single Name CDS contracts (''STEC Contracts'') currently cleared by ICC and governed by Section 26G of the ICC Rules, the Standard Emerging Sovereign CDS contracts (''SES Contracts'') currently cleared by ICC and governed by Section 26D of the Rules. Accordingly, the proposed rules found in Section 26H largely mirror the ICC rules for STEC Contracts in Section 26G, with certain modifications that reflect differences in terms and market conventions between those contracts and STEFC Contracts (including that STEFC Contracts incorporate additional Financial Reference Entity terms under the 2014 ISDA Definitions). STEFC Contracts will be denominated in Euros. Rule 26H–102 (Definitions) sets forth the definitions used for the STEFC Contracts. The definitions are substantially similar to the definitions found in Subchapter 26G of the ICC Rulebook, but contain reference only to the 2014 ISDA Definitions and contain other conforming changes. Rules 26H–203 (Restriction on Activity), 26H–206 (Notices Required of Participants with respect to STEFC Contracts), 26H–303 (STEFC Contract Adjustments), 26H–309 (Acceptance of STEFC Contracts by ICE Clear Credit), 26H–315 (Terms of the Cleared STEFC Contract), 26H–316 (Relevant Physical Settlement Matrix Updates), 26H–502 (Specified Actions), and 26H–616 (Contract Modification) reflect or incorporate the basic contract specifications for STEFC Contracts and are substantially similar to corresponding sections of Subchapter 26G of the ICC Rulebook.

The ICC Restructuring Procedures supplement the provisions of Subchapter 26E of the ICC Rules with respect to Relevant Restructuring Contracts. The ICC Restructuring Procedures are amended throughout to reflect revisions to defined terms in the ICC Rules including ''Relevant Restructuring Contract,'' ''Relevant Restructuring Credit Event,'' and ''Applicable Credit Derivatives Definitions'' as defined in ICC Rules 26E–102 (Definitions) and 20–102 (Definitions) and to make appropriate distinctions between the applicability of the 2003 ISDA Definitions and the 2014 ISDA Definitions and provisions therein.

The ICC Risk Management Framework has been revised to provide for appropriate portfolio treatment between CDS Contracts cleared under the 2003 and 2014 Definitions. In the ICC Risk Management Framework, each index, sub-index or underlying single name is deemed a separate ''Risk Factor.'' The revisions to the ICC Risk Management Framework introduce a ''Risk Sub-Factor'' as a specific single name and any unique combination of instrument attributes (e.g., restructuring clause, 2003 or 2014 ISDA Definitions, debt tier, etc). The union of all Risk Sub-Factors that share the same underlying single name form a single name Risk Factor. The portfolio treatment at the Risk Sub-Factor level is provided for in the Risk Management Framework, as appropriate. Additionally, the ICC Risk Management Framework has been revised to include long and short positions of Risk Sub-Factors for a single name Risk Factor into the Jump-to-Default requirement. Finally, the ICC Risk Management Framework has been revised to include other cleanup and clarification changes (e.g., to address the difference in risk time horizon between North American and European instruments).

2. Statutory Basis

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F) [4] and Rule 17Ad–22,[5] because ICC believes that the proposed rule change will assure the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions. ICC believes the proposed change to the ICC Rules, Restructuring Procedures and Risk Management Framework conforms to the Applicable Credit Definitions as published by ISDA in conjunction with an industry-wide effort. As part of this effort, CDS market participants have developed the 2014 ISDA Definitions to reflect market experience since the ISDA Credit Derivatives Definitions were last significantly amended in 2009 (including credit events involving financial and sovereign entities), and to make various related improvements and clarifications to the terms of CDS contracts and the operation of the CDS market. The change to the ICC Rules thus incorporates references to the 2014 ISDA Definitions in order to permit clearing of contracts referencing the new definitions, and distinguishes where applicable between the 2014 ISDA Definitions and the 2003 ISDA Definitions. ICC plans to accept for clearing contracts referencing the industry standard 2014 ISDA Definitions beginning with the planned industry-wide implementation on September 22, 2014 (and to convert certain existing contracts to the new definitions as of that date). ICC believes the revisions to the ICC Rules, Restructuring Procedures and Risk Management Framework are necessary in order to permit clearing of contracts on the new terms, and to provide the market with the necessary assurances that ICC plans to implement the Applicable Credit Definitions consistent

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] 17 CFR 240.17Ad–22.

with industry practice. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F) [6] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed change to the ICC Rules in order to incorporate references to the 2014 ISDA Definitions will apply consistently across all Participants and Non-Participant Parties and facilitates changes sought to be made by the industry throughout the CDS market. ICC does not expect that the proposed change will affect access to clearing for Participants or their customers, or materially affect the cost of clearing. As a result, ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition not appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited by ICC. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2014–11 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–ICC–2014–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICC and on ICC's Web site at *https://www.theice.com/clear-credit/regulation*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2014–11 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18377 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72711; File No. SR–CHX–2014–10]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning the Use of Market Data Feeds by the Exchange

July 29, 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 July 16, 2014, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to adopt Article 1, Rule 4, to provide that the consolidated market data feed disseminated by the securities information processors shall be the only market data feed utilized by the Exchange for all operational and regulatory compliance purposes. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[3]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Article 1, Rule 4 to provide that the consolidated market data disseminated by the securities information processors (''SIPs'') [4] (''SIP data feeds'') shall be the only market data feed utilized by the Exchange for all operational and regulatory compliance purposes. The SIP data feeds are the only data feeds the Exchange currently utilizes for all operational and regulatory compliance purposes. Thus, the Exchange does not utilize any direct proprietary market data feeds from any external market for such purposes.[5]

For example, the Exchange only utilizes the SIP data feeds to calculate the National Best Bid and Offer (''NBBO'') for the purposes of compliance with Regulation NMS and Regulation SHO. The Exchange does not ignore or modify SIP quote data for the purposes of establishing the NBBO under any circumstances where the SIP data feed shows an uncrossed market.[6] Similarly, the Exchange utilizes the SIP data feeds in its surveillance of order and trade activity on the Exchange, when applicable.

The Exchange notes that it does not currently offer outbound order routing from the Exchange. If the Exchange implements outbound routing in the future, the Exchange intends for its routing facilities to only utilize the SIP data feeds.[7] The Exchange also notes that it does not currently offer pegged orders, which are orders that have a limit price that tracks the NBBO, such as the midpoint of the NBBO.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule concerning the Exchange's use of the SIP market data feeds will enhance transparency concerning the operation of the Exchange. This will, in turn, promote the public confidence and strengthen the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange anticipates that other national securities exchanges will also adopt similar rules outlining their respective use of data feeds and this proposed rule will ensure consistent treatment of this subject matter in the respective rulebooks.

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 Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act [10] and paragraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–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–CHX–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

[4] *See* 15 U.S.C. 78c(a)(22)(A).

[5] In addition to the SIP data feeds, the Exchange utilizes its own internal data regarding its own market for operational and regulatory compliance purposes.

[6] Pursuant to Paragraph .01(d) of CHX Article 20, Rule 5, the Exchange's NBBO calculation protocol will ignore crossing quotes and shall execute orders up to the first uncrossed NBBO. In doing so, the Exchange will only utilize the SIP data feeds to establish the first uncrossed NBBO.

[7] Adoption of an outbound order routing functionality is subject to Commission approval pursuant to Rule 19b–4 under the Act.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, as required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2014–10 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18385 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72708; File No. SR–NYSEArca–2014–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Exchange's Use of Certain Data Feeds for Order Handling and Execution, Order Routing, and Regulatory Compliance

July 29, 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 July 18, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 5, 2014, in a speech entitled ''Enhancing Our Market Equity Structure,'' [sic] Mary Jo White, Chair of the Securities and Exchange Commission (''SEC'' or the ''Commission'') requested the equity exchanges to file with the Commission the data feeds used for purposes of (1) order handling and execution (*e.g.,* with pegged or midpoint orders); (2) order routing, and (3) regulatory compliance, if applicable.[4] Subsequent to the Chair's speech, the Division of Trading and Markets stated that it ''believes there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof,'' are used for these purposes and requested that proposed rule changes be filed that disclose such information.[5] The stated goal of disclosing this information is to provide broker-dealers and investors with enhanced transparency to better assess the quality of an exchange's execution and routing services.

The data feeds available for the purposes of order handling and execution, order routing, and regulatory compliance include the exclusive securities information processor (''SIP'') data feeds[6] or proprietary data feeds from individual market centers.

(i) Overview of Exchange Rules Governing Order Handling, Execution, and Routing

The Exchange adopted its order execution and order routing rules to comply with Regulation NMS.[7] As such, before executing any arriving or resting interest, the Exchange evaluates whether the execution would trade through a protected quotation[8] in violation of Rule 611 of Regulation NMS (''Rule 611''),[9] and if so, whether it is eligible for an exception to Rule 611. The Exchange also evaluates whether displaying a bid or offer would result in locking or crossing a protected quotation in violation of Rule 610(d) of Regulation NMS (''Rule 610(d)''),[10] or if it is eligible for an exception to Rule 610(d).

If any protected quotation is superior to the Exchange's best bid or offer, the Exchange may route a marketable order as an Intermarket Sweep Order (''ISO'')[11] (if consistent with the order's instructions), unless a trade-through exception applies under Rule 611(b). Likewise, if the display of an order would lock or cross a protected quotation, the Exchange may route such interest to one or more protected quotations, if consistent with the order's instructions. In addition, if consistent with an order's instructions, the Exchange may also route an order to other available quotes in the Exchange's routing determination.[12] The Exchange further notes that its routing brokers do

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler, O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at *www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw*).

[5] *See* Letter from James Burns, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission, to Jeffrey C. Sprecher, Chief Executive Officer, Intercontinental Exchange, Inc., dated June 20, 2014.

[6] The SIP feeds are disseminated pursuant to effective joint-industry plans as required by Rule 603(b) of Regulation NMS. 17 CFR 242.603(b). The three joint-industry plans are: (1) The CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for securities with the primary listing market on exchanges other than NASDAQ Stock Market LLC (''Nasdaq''): (2) The CQ Plan, which disseminates consolidated quotation information for securities with their primary listing on exchanges other than Nasdaq; and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities with their primary listing on Nasdaq.

[7] *See* Securities Exchange Act Release No. 54549 (Sept. 29, 2006), 71 FR 59179 (Oct. 6, 2006) (SR–NYSEArca–2006–59) (Order approving the Exchange's rule proposal to bring its rules into conformity with Regulation NMS).

[8] A ''protected bid'' or ''protected offer'' means a quotation in an NMS stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. 17 CFR 242.600(b)(57). A ''protected quotation'' means a protected bid or a protected offer. *See* 17 CRF 242.600(b)(58). The PBBO is the best-priced protected bid and the best-priced protected offer.

[9] 17 CFR 242.611.

[10] 17 CFR 242.610(d).

[11] An ISO is defined as a limit order for a NMS Stock that (i) when routed to a trading center, is identified as an ISO; and (ii) simultaneously with the routing of the ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the MNMS [sic] stock with a price that is superior to the limit price of the ISO. *See also* Rule 7.37(d)(2)(B)(i)

[12] *See* NYSE Arca Equities Rules 7.37(d)(2)(A) and 7.37(d)(4).

not have any discretion about where to route such interest.[13]

(ii) Exchange's Stated Policy, Practice, or Interpretation With Respect to the Meaning, Administration, or Enforcement of an Existing Rule Regarding How and for What Purpose it Uses Data Feeds

The Exchange uses the following feeds to determine protected quotations on markets other than the Exchange for purposes of compliance with Rule 611 and Rule 610(d), including identifying where to route ISOs, to calculate the PBBO or NBBO for purposes of order types that are priced based on the PBBO or NBBO,[14] to route interest pursuant to NYSE Arca Equities Rule 7.37(d)(2)(A), and to determine the NBB for purposes of complying with Rule 201 of Regulation SHO and NYSE Arca Equities Rule 7.16(f): [15]

- BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., and NYSE MKT LLC: SIP data feeds only.
- BATS Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc. NASDAQ OMX BX LLC, NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC and New York Stock Exchange LLC: A combination of proprietary data feeds from each respective exchange and the SIP data feeds.

In addition, the Exchange receives data feeds directly from broker dealers for purposes of routing interest pursuant to NYSE Arca Equities Rule 7.37(d)(2)(A).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and furthers the objectives of Section 6(b)(5),[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because it provides enhanced transparency to better assess the quality of an exchange's execution and routing services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about which data feeds that the Exchange uses for execution and routing decisions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–82 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–2014–82. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[13] *See* NYSE Arca Equities Rule 7.45(b)(1).

[14] The NBBO is defined as the best bid and best offer of an NMS security that is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. 17 CFR 242.600(b)(3). The Exchange notes that the NBBO may differ from the PBBO because the NBBO includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37). By contrast, a protected quotation is an automated quotation that is the best bid or offer of a national securities exchange. 17 CFR 242.60)(b)(57)(iii) [sic].

[15] NYSE Arca Equities Rule 7.16(f) requires that Exchange systems not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB if the price of that security decreases by 10% or more, as determined by the Exchange, from the security's closing price on the Exchange at the end of regular trading hours on the prior day.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

available publicly. All submissions should refer to File Number SR–NYSEArca–2014–82 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18382 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72714; File No. SR–NYSEArca–2014–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change, as Modified by Amendment Nos. 1 and 4 Thereto, Relating to Listing and Trading of Shares of the Reality Shares DIVS Index ETF under NYSE Arca Equities Rule 5.2(j)(3)

July 29, 2014.

On April 11, 2014, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Reality Shares DIVS Index ETF (''Fund'') (formerly, Reality Shares Isolated Dividend Growth Index ETF) under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published for comment in the **Federal Register** on April 30, 2014.[3] On May 6, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[4] On June 6, 2014, the Exchange filed Amendment No. 4 to the proposed rule change.[5] On June 13, 2014, pursuant to Section 19(b)(2) of the Act,[6] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[7] The Commission received no comment letters on the proposed rule change. This Order institutes proceedings under Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 4 thereto.

I. Description of the Proposal

A. In General

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units on the Exchange.[9] The Shares of the Fund will be offered by the Reality Shares ETF Trust (formerly, the ERNY Financial ETF Trust) (''Trust''). The Trust will be registered with the Commission as an open-end management investment company.[10] Reality Shares Advisors, LLC (formerly, ERNY Financial Advisors, LLC) will serve as the investment adviser to the Fund (''Adviser''). ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as administrator, custodian and transfer agent for the Fund.

B. The Exchange's Description of the Fund

The Exchange has made the following representations concerning the Fund.

The Fund will seek long-term capital appreciation by tracking the performance of the Reality Shares DIVS Index (''Index''). The Index was developed and is maintained by Reality Shares, Inc. (''Index Provider'').[11] The Adviser is a wholly-owned subsidiary of the Index Provider. The Index Provider is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealer. The Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealer.[12]

1. Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on S&P 500 Index options and options on exchange-traded funds (''ETFs'')[13] designed to track the S&P

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72015 (Apr. 24, 2014), 79 FR 24475 (''Notice'').

[4] In Amendment No. 1, the Exchange clarified the valuation of investments for purposes of calculating net asset value, provided additional details regarding the dissemination of the Disclosed Portfolio, and made other minor technical edits to the proposed rule change. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Exchange filed Amendment No. 2 on June 4, 2014 and withdrew it on June 5, 2014, and filed Amendment No. 3 on June 5, 2014 and withdrew it on June 6, 2014. Amendment No. 4 supersedes both Amendment Nos. 2 and 3. In Amendment No. 4, the Exchange amended the proposal to reflect a name change to the Fund and the underlying index. Specifically, the Exchange replaced each reference to ''Reality Shares Isolated Dividend Growth Index ETF'' in the proposal with ''Reality Shares DIVS Index ETF'' and replaced each reference to ''Reality Shares Isolated Dividend Growth Index'' in the proposal with ''Reality Shares DIVS Index.'' Amendment No. 4 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 72385, 79 FR 35205 (Jun. 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] NYSE Arca Equities Rule 5.2(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities).

[10] According to the Exchange, the Trust will be registered under the Investment Company Act of 1940 (''1940 Act''). On November 12, 2013, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (''1933 Act'') and under the 1940 Act relating to the Fund, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333–192288 and 811–22911) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. Investment Company Act Release No. 30678 (Aug. 27, 2013) (''Exemptive Order''). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[11] The Index will be calculated by International Data Corporation, which is not affiliated with the Adviser or the Index Provider, and which is not a broker-dealer or fund advisor. Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) provides that, if the applicable index is maintained by a fund advisor or a broker-dealer, the fund advisor or broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer or fund advisor.

[12] The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index. The Exchange notes that, in the event (a) the Adviser, any sub-adviser, or the Index Provider becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser, sub-adviser, or Index Provider is a registered broker-dealer or becomes affiliated with a broker-dealer, that entity will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[13] For purposes of this proposed rule change, such ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)) and

500 Index.[14] All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable underlying index or ETF, as well as market expectations regarding the level of dividends to be paid on those indexes or ETFs during the term of the option. The Index constituents, and, therefore, most of the Fund's portfolio holdings, will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (*i.e.,* options on the S&P 500 Index or options on S&P 500 ETFs) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call options combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the expected dividends reflected in options on the S&P 500 Index and options on ETFs tracking the S&P 500 Index while neutralizing the impact of stock price movements. According to the Exchange, over time, the Index will increase or decrease in value as the dividend spread between the near-term and long-term option combinations increases or decreases as a result of changing market expectations for dividend growth.

2. Principal Investments of the Fund

The Fund will seek long-term capital appreciation and will seek investment results that, before fees and expenses, generally correspond to the performance of the Index. At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index. A figure of 1.00 would represent perfect correlation. The Fund generally will use a representative sampling investment strategy.

The Fund will buy (*i.e.,* hold a ''long'' position in) and sell (*i.e.,* hold a ''short'' position in) put and call options. The strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on a security while minimizing its exposure to changes in the trading price of that security.

The Fund will buy and sell U.S. exchange-listed options on the S&P 500 Index and U.S. exchange-listed options on ETFs designed to track the S&P 500 Index. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the S&P 500 Index and options on ETFs tracking the S&P 500 Index, while minimizing the Fund's exposure to changes in the trading price of such securities.

3. Other Investments of the Fund

While, as described above, at least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index, the Fund may invest up to 20% of the Fund's total assets in other securities and financial instruments, as described below.

The Fund may invest in U.S. exchange-listed futures contracts based on the S&P 500 Index and ETFs designed to track the S&P 500 Index, and forward contracts based on the S&P 500 Index and ETFs designed to track the S&P 500 Index. The Fund's use of exchange-listed futures contracts and forward contracts is designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the S&P 500 Index and options on ETFs tracking the S&P 500 Index, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may also buy and sell OTC options on the S&P 500 Index and on ETFs designed to track the S&P 500 Index.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on the S&P 500 Index and ETFs designed to track the S&P 500 Index.[15] In a typical swap transaction, one party agrees to make periodic payments to another party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, with the Fund receiving or paying only the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations.

The Fund may invest up to 20% of its assets (exclusive of collateral held from securities lending, if any) in exchange-listed equity securities and derivative instruments (specifically, futures contracts, forward contracts, and swap transactions)[16] relating to the Index and its component securities that the Adviser believes will help the Fund track the Index. For example, the Fund may buy and sell ETFs and, to a limited extent, individual large-capitalization equity securities listed and traded on a U.S. national securities exchange.

The Fund may invest in the securities of other investment companies

Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may not invest in leveraged or inverse leveraged (*e.g.,* 2X, –2X, 3X, or –3X) ETFs or options on such ETFs.

[14] The Index will not directly measure or track actual dividend payments or the actual growth in dividend payments, but will instead track market expectations of dividend growth as implied by the options that make up the Index.

[15] The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

[16] Where practicable, the Fund intends to invest in swaps cleared through a central clearing house (''Cleared Swaps''). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

(including money market funds) to the extent permitted under the 1940 Act.

The Fund's short positions and its investments in swaps, futures contracts, forward contracts, and options based on the S&P 500 Index and ETFs designed to track the S&P 500 Index will be backed by investments in cash, high-quality short-term debt securities, and money-market instruments in an amount equal to the Fund's maximum liability under the applicable position or contract, or will otherwise be offset in accordance with Section 18 of the 1940 Act. Short-term debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government Securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements,[17] and bonds that are rated BBB or higher.

In addition to the investments described above, and in a manner consistent with its investment objective, the Fund may invest a limited portion of its net assets in high-quality, short-term debt securities and money market instruments for cash management purposes.[18]

The Fund will attempt to limit counterparty risk in non-cleared swap, forward, and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.[19]

The Exchange represents that the Fund's investments in swaps, futures contracts, forward contracts, and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.[20]

4. Investment Restrictions of the Fund

To the extent the Index concentrates (*i.e.,* holds 25% or more of its total assets) in the securities of a particular industry or group of industries, the Fund will concentrate its investments to approximately the same extent as the Index.

The Fund may hold up to an aggregate amount of 15% of its net assets in assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.[21] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33 1/3% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities.

The Fund will be classified as a ''non-diversified'' investment company under the 1940 Act and intends to qualify for, and to elect treatment as, a separate regulated investment company under Subchapter M of the Internal Revenue Code. The Exchange represents that the Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2014–41 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[22] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[23] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.''[24]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written

[17] The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed-upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

[18] The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

[19] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

[20] To limit the potential risk associated with such transactions, the Fund will segregate or ''earmark'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, will enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[21] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[25]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 26, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 9, 2014.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[26] as modified by Amendment Nos. 1 and 4 to the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. Because the Index is designed to reflect changes in market expectations of future dividend growth, rather than to track actual dividend growth, is the Fund's investment strategy fundamentally based on an assumption that the options markets systemically underprice dividend growth? What are commenters' views regarding whether investors would be able to understand the strategy, risks, potential rewards, assumptions, and expected performance of the Fund's strategy?

2. With respect to the trading of the Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what ways?

3. How closely do commenters think the market price of the Shares will track the Fund's intraday indicative value (''IIV'') or the intraday value of the Index? Are certain of these values likely to be more volatile than others? If so, how would this affect trading in the Shares? Are the Shares likely to trade with a significant premium or discount to IIV? What are commenters' views of how effectively the IIV of the Fund would represent the Fund's portfolio? What are commenters' views of how the Shares' market price, the Fund's IIV, and the intraday value of the Index will relate to one another during times of market stress?

4. Does the liquidity of the long-dated options in which the Fund will invest differ materially from that of the short-dated options in which the Fund will invest? If so, how would that affect the ability of market makers to engage in arbitrage or to hedge their positions while making a market in the Shares? Would the liquidity characteristics of the Index components or of the options in the Fund's portfolio affect the calculation of the Index value, the calculation of the Fund's IIV, the calculation of the Fund's NAV, or the ability of market makers or other market participants to value the Shares? If so, how?

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–2014–41 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 Numbers SR–NYSEArca–2014–41. 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 these filings 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–NYSEArca,2014–41 and should be submitted on or before August 26, 2014. Rebuttal comments should be submitted by September 9, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18388 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[25] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[26] *See supra* note 3.

[27] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72720; File No. SR–NYSEArca–2014–81]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services, Related to Co-Location Services

July 30, 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 July 23, 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 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] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Options Fee Schedule'') and, through its wholly owned subsidiary NYSE Arca Equities, Inc., to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Equities Fee Schedule'' and, together with the Options Fee Schedule, ''Fee Schedules''), related to co-location services. The Exchange proposes to implement the fee change effective July 28, 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 Schedules related to co-location services. The Exchange proposes to implement the fee change effective July 28, 2014.[4] The proposed change is intended to, among other things, streamline the offerings available to Users in the data center, make the Fee Schedules easier to understand and administer, and eliminate references to services that would be discontinued because they are no longer utilized by Users.[5]

Cages

A User is able to purchase a cage to house its cabinets within the data center. A cage would typically be purchased by a User that has several cabinets within the data center and that wishes to arrange its cabinets contiguously while also enhancing privacy around its cabinets. The Exchange charges fees for cages based on the size of the cage, which directly corresponds to the number of cabinets housed therein.[6] The Exchange proposes to amend the Fee Schedules to reflect that a User must have at least two cabinets in the data center to purchase a cage. Existing pricing for cages would not change.

LCN CSP Access

The Exchange's ''Liquidity Center Network'' (''LCN'') is a local area network that is available in the data center. A User is currently able to act as a content service provider (a ''CSP'' User) and deliver services to another User in the data center (a ''Subscribing'' User).[7] These services could include, for example, order routing/brokerage services and/or data delivery services. LCN CSP connections allow the CSP User to send data to, and communicate with, all the properly authorized Subscribing Users at once, via a specific, dedicated LCN connection (an ''LCN CSP'' connection). The Fee Schedules include related pricing.

The Exchange proposes to discontinue the one gigabit (''Gb'') LCN CSP connection offering, which is no longer utilized by Users, and to remove references to related pricing from the Fee Schedules. The 10 Gb LCN CSP connection offering would remain available, as would the related pricing in the Fee Schedules. Also, a CSP User would remain able to deliver its services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from three ''bundled'' connectivity options, at various bandwidths (*i.e.,* one, 10 and 40 Gb), when connecting to the data center. The Exchange proposes to discontinue ''bundled'' connectivity options that are no longer utilized by Users and to remove references to related pricing from the Fee Schedules. In particular, the Exchange would discontinue (1) ''Option 2'' completely, (2) the 10 Gb LX and 40 Gb bandwidth ''bundles'' under ''Option 1,'' and (3) the one Gb, 10 Gb LX and 40 Gb ''bundles'' under Option 3. Current ''Option 3'' would be renumbered as ''Option 2.''

Initial Install Services

When a User selects a new cabinet in the data center it is charged the ''Initial Install Services'' fee ($800 per dedicated cabinet or $400 for per eight-rack unit in a partial cabinet), which includes initial racking of equipment in the cabinet, provision of a certain number of cables (10 per dedicated cabinet or five per eight-rack unit in a partial cabinet), and a certain number of hours of labor (four per dedicated cabinet or two per eight-rack unit in a partial cabinet).[8]

The Exchange proposes that the Initial Install Services would no longer limit the number of cables that are included and that references to those limits would be removed from the Fee Schedules. A User would therefore be provided with the number of cables required to provision the cabinet for initial installation. The existing limit on the number of labor hours included would remain.

Hot Hands and Related Services

The Exchange currently offers a ''Hot Hands Service,'' which allows Users to use on-site data center personnel to maintain User equipment.[9] The applicable fee in the Fee Schedules for Hot Hands Service is $200 per hour if scheduled during normal business hours (*i.e.,* on non-Exchange holidays, Monday to Friday, 9 a.m. to 5 p.m.) and if scheduled at least one day in advance. A higher fee applies if, for example, the

[4] The Securities and Exchange Commission (''Commission'') initially approved the Exchange's co-location services in Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the ''Original Co-location Approval''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, the term ''User'' includes (i) ETP Holders and Sponsored Participants that are authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (*see* NYSE Arca Equities Rule 1.1(yy)); (ii) OTP Holders, OTP Firms and Sponsored Participants that are authorized to obtain access to the NYSE Arca System pursuant to NYSE Arca Options Rule 6.2A (*see* NYSE Arca Options Rule 6.1A(a)(19)); and (iii) non-ETP Holder, non-OTP Holder and non-OTP Firm broker-dealers and vendors that request to receive co-location services directly from the Exchange. *See, e.g.,* Securities Exchange Act Release Nos. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR–NYSEArca–2011–74) and 65971 (December 15, 2011), 76 FR 79267 (December 21, 2011) (SR–NYSEArca–2011–75). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and New York Stock Exchange LLC. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release Nos. 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR–NYSEArca–2012–62); and 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63).

[7] *Id.*

[8] The Exchange explained the Initial Install Services fee when it introduced partial cabinet offerings. *See* Securities Exchange Act Release No. 71130 (December 18, 2013), 78 FR 77765 (December 24, 2013) (SR–NYSEArca–2013–143).

[9] *See* Original Co-location Approval.

Hot Hands Service is scheduled during extended business hours (*i.e.,* Monday to Friday, 5 p.m. to 9 a.m., Exchange holidays, and weekends, if scheduled at least one day in advance) or if the Hot Hands Service is ''expedited'' (*i.e.,* if not scheduled at least one day in advance).

The Exchange proposes to consolidate all the current categories of Hot Hands Service under a single Hot Hands Service category and charge a single rate of $100 per half hour. The proposed $100 per half hour charge would be equivalent to the existing $200 per hour rate in the Fee Schedules, except that it would reflect a charge for Hot Hands Service in half hour increments. The other existing rates that currently apply to Hot Hands Service during extended business hours or for expedited Hot Hands Service would be discontinued.

Several other related services described in the Fee Schedules are available to Users, for which the same $200 per hour rate applies as is currently applicable for the standard Hot Hands Service, as follows: [10]

- ''Rack and Stack''
- Installation of one server in a User's cabinet. This service encompasses handling, unpacking, tagging, and installation of the server as well as one network connection within the User's rack.
- ''Install and Document Cable''
- Labor charges to install and document the fitting of cable(s) in a User's cabinet(s) in excess of the cables included in the cabinet Initial Install Services fee (as described above); and
- ''Technician Support Service—Non Emergency''
- Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. One prior day's notice is required.

The Exchange proposes to perform these services under the single Hot Hands Service category proposed above, at the proposed Hot Hands Service rate of $100 per half hour. Because of the elimination of the limit on the number of cables included with the Initial Install Services fee, the ''Install and Document Cable'' service that would be subsumed into the Hot Hands Service fee would apply to additional labor hours needed to complete an initial install above the amount of time included in the Initial Install Services fee (*i.e.,* greater than four hours per dedicated cabinet or two hours per eight-rack unit in a partial cabinet).

Several other related services described in the Fee Schedules are available to Users in the data center for which the service fee is different than the current $200 per hour Hot Hands Service fee, as follows: [11]

- ''Power Recycling''—$50 per reset.
- Reboot of power on one server or switch as well as observing and reporting on the status of the reboot back to the User.
- ''Equipment Maintenance Call Escalation''—$100 per call.
- Hardware maintenance-break fix services.
- ''Technician Support Service—Emergency''—$325 per hour.
- Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Two hour notice is required.

The Exchange also proposes to perform these services under the single Hot Hands Service category proposed above, similarly at the proposed Hot Hands Service rate of $100 per half hour.

Obsolete Dates

Certain services in the data center that are described in the Fee Schedules identify introductory dates during which discounted pricing had been in effect. These dates have passed. The Exchange proposes to eliminate the obsolete references to these dates. This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is an ETP Holder, an OTP Holder or OTP Firm, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [12] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[13]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users 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,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. The Exchange believes that the proposed change is consistent with the Act because it would permit the Exchange to streamline the offerings available to Users in the data center, make the Fee Schedules easier to understand and administer, and eliminate references in the Fee Schedules to services that would be discontinued because they are no longer utilized by Users.

The Exchange believes that it is reasonable to require that a User have a minimum of two cabinets in the data center in order to purchase a cage because a User with one cabinet typically would not be interested in placing a cage around a single cabinet, due to the lack of necessity and the added cost that the User would incur. The Exchange also believes that this is reasonable because the existing monthly cage fees reflect the opportunity cost to the Exchange of giving up floor space in the data center for the cage's physical footprint and the value of such space to the User, in that such floor space otherwise could be utilized for additional cabinets for the same or other

[10] *Id.*

[11] *Id.*

[12] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[13] *See* SR–NYSEArca–2013–80, *supra* note 5 at 50459. The Exchange's affiliates have also submitted the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2014–61 and SR–NYSE–2014–37.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

Users or other Exchange purposes. Placing just a single cabinet in a cage would not be consistent with this opportunity cost. However, existing pricing for cages would not change, and requiring a minimum of two cabinets also would not result in a price increase for a cage, because the price for the cage would not increase until a User's number of cabinets reaches the next pricing tier for cages (*i.e.,* 15–28 cabinets).

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Fee Schedules because the resulting Fee Schedules would be more streamlined and easier to read, understand and administer. This would also contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure (*i.e.,* hardware, software, etc.).

The Exchange believes that it is reasonable to eliminate the limit on the number of cables that are included in the Initial Install Services fee because it would assist Users in meeting the growing needs of their business operations. Some Users require fewer cables than the current limits, while other Users require more. However, the Exchange generally anticipates that, on average, these amounts would be consistent with the amounts currently specified in the Fee Schedules. The existing limits on labor hours would remain. Therefore, a User whose cable requirements result in labor hours that exceed the amount included in the Initial Install Services fee would be required to utilize Hot Hands Service and pay the corresponding fee.

The Exchange believes that it is reasonable to charge a single rate of $100 per half hour for Hot Hands Service, including for Hot Hands Service during extended business hours and for expedited Hot Hands Service. The proposed $100 per half hour charge would be equivalent to the existing $200 per hour rate in the Fee Schedules, except that it would reflect billing for Hot Hands Service in half hour increments. This is reasonable because it would consolidate several similar services under one category with a single applicable rate, thereby eliminating the need for Users to identify the type of Hot Hands Service they are requesting, the timing for the request, or for the Exchange to monitor and record the initiation time of the corresponding performance of the service. The Exchange believes that charging $100 per half hour is reasonable because it would represent an overall decrease compared to the several, current Hot Hands Service categories (*i.e.,* during extended business hours and for expedited Hot Hands Service).

The Exchange believes that it is reasonable to perform other related services under the Hot Hands Service category, for which the same $200 per hour rate currently applies for the standard Hot Hands Service, because this would simplify the descriptions of the various categories of services available to Users. However, despite the proposed change, the applicable rate would remain consistent with the current rate in the Fee Schedules (*i.e.,* $100 per half hour instead of $200 per full hour), as would the actual performance of these services, because the data center personnel would be the same as the personnel performing Hot Hands Service.

The Exchange also believes that it is reasonable to perform various other related services under the proposed single Hot Hands Service category, at the proposed rate of $100 per half hour, despite different fees currently applying to such services. This would contribute to further simplifying the descriptions of the various categories of services available to Users and make the Fee Schedules easier to understand and administer. The applicable base rate would decrease for Technician Support Service—Emergency. The current premium that is factored into the $325 per hour rate to account for the ''emergency'' nature of the service request would be eliminated, which is reasonable because it would address the needs of Users to have their requirements attended to in the data center via the Hot Hands Service, even when time is of the essence for resolution. In contrast, the base rate for ''Power Recycling'' would increase from $50 per reset to $100 per half hour. The Exchange believes that this is reasonable because several of the other services in the data center to which Users have access would decrease in cost as a result of this proposal (*i.e.,* Hot Hands Service during extended business hours and for expedited Hot Hands Service as well as the Technician Support Service—Emergency). On balance, therefore, rates charged to Users would decrease as a result of the proposed change, even if a User pays a slightly higher fee for ''Power Recycling'' under the single Hot Hands Service category. Also, while the current rate in the Fee Schedules for ''Equipment Maintenance Call Escalation'' is $100 per call, this service may only take a half hour to complete, in which case the resulting fee charged to a User may be comparable to the current base rate in the Fee Schedules. Despite the proposed change, the actual performance of these services would remain the same, because the data center personnel would be the same as the personnel performing Hot Hands Service.

The Exchange believes that it is reasonable to eliminate references in the Fee Schedules to dates that have already passed because these references are obsolete and no longer have an impact on pricing.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users).

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address a competitive issue with other exchanges that offer co-location or related services, or competitive issues between Users of these services in the

[16] 15 U.S.C. 78f(b)(8).

data center, but rather to streamline the offerings available to Users in the data center and eliminate references to services that are no longer utilized by Users, thereby making the Fee Schedules easier to understand and administer.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] 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) [19] 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–2014–81 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–2014–81. 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 20549–1090, 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–2014–81 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18434 Filed 8–4–14; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14078 and #14079]

South Dakota Disaster #SD–00065

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of SOUTH DAKOTA (FEMA–4186–DR), dated 07/28/2014.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/13/2014 through 06/20/2014.

DATES: *Effective Date:* 07/28/2014.

Physical Loan Application Deadline Date: 09/26/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 04/28/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/28/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Butte, Clay, Corson, Dewey, Hanson, Jerauld, Lincoln, Minnehaha, Perkins, Turner, Union, Ziebach, and the Standing Rock Sioux Tribe within Corson County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14078C and for economic injury is 14079C.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–18404 Filed 8–4–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14076 and #14077]

Nebraska Disaster #NE–00063

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of NEBRASKA (FEMA–4185–DR), dated 07/28/2014.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 06/01/2014 through 06/04/2014.

DATES: *Effective Date:* 07/28/2014.

Physical Loan Application Deadline Date: 09/26/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 04/28/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/28/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Burt, Butler, Cass, Hamilton, Holt, Nemaha, Pawnee, Polk, Rock, Thurston, Valley, Washington.

The Interest Rates are:

For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14076B and for economic injury is 14077B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–18405 Filed 8–4–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending June 28, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0109.

Date Filed: June 23, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 2014.

Description: Application of Seaport Airlines, Inc. requesting a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property and mail between the United States and Mexico.

Docket Number: DOT–OST–2014–0111.

Date Filed: June 24, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 14, 2014.

Description: Application of Silk Way West Airlines requesting a foreign air carrier permit and an exemption to engage in (1) scheduled air transportation of cargo between any point or points in Azerbaijan, via intermediate points, and any point or points in the United States; and (2) charter air transportation of cargo between any point or points in Azerbaijan and any point or points in the United States, as well as any point or points in the United States and any point or points in a third country or countries subject to pertinent national, bilateral and international rules and regulations.

Docket Number: DOT–OST–2014–0114.

Date Filed: June 25, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 16, 2014.

Description: Application of Aerodynamics Incorporated requesting a certificate of public convenience and necessity to engage in scheduled interstate air transportation of persons, property and mail.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–18464 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 5, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0115.

Date Filed: July 1, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 22, 2014.

Description: Application of Polar Air Cargo Worldwide, Inc. requesting renewal of its certificate of public convenience and necessity for Route 820 authorizing it to provide scheduled foreign air transportation of property

and mail between any point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international operations, and beyond to any points outside of China, with full traffic rights.

Docket Number: DOT–OST–2014–0116.

Date Filed: July 2, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 2014.

Description: Application of Aviation Partners of Boynton Beach, LLC d/b/a Hummingbird Air requesting authorization to transition from unscheduled to scheduled commuter service offing daily scheduled flights between St. Croix, U.S. Virgin Islands and the Eastern Caribbean States.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–18473 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 19, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0121.

Date Filed: July 16, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 2014.

Description: Application of Frontier Airlines, Inc. (''Frontier'') requesting a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between (1) Washington, DC and Cancun, Mexico, (2) Washington, DC and Nassau, Bahamas, and (3) Trenton, New Jersey and Nassau, Bahamas. Frontier also requests a designation to operate in the Washington, DC–Cancun, Mexico market.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–18469 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Sixth Meeting: RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

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

ACTION: Meeting Notice of RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of the twenty sixth meeting of the RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held September 16–19, 2014, from 8:30 a.m.–5 p.m. on September 16–18th, and 8:30 a.m.–4 p.m. on September 19th.

ADDRESSES: The meeting will be held at RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington DC 20036. The RTCA SC–213 site has contact information to support the meetings. There will be a WebEx for this meeting to facilitate the FRAC review and disposition for remote members.

FOR FURTHER INFORMATION CONTACT: Tim Etherington, *tjetheri@rockwellcollins.com,* (319) 295–5233, Patrick Krohn, *pkrohn@uasc.com,* (425) 602–1375 and The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Additional contact information: Please contact Patrick Krohn, *pkrohn@uasc.com,* telephone (425) 602–1375 or mobile at (425) 829–1996. RTCA contact is Jennifer Iverson, *jiverson@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 213. The agenda will include the following:

Tuesday, September 16

- Plenary discussion (sign-in at 08:00 a.m.)
- Introductions and administrative items
- Review and approve minutes from last full plenary meeting
- Review of terms of reference (if needed)
- Status of DO–341A
- DO–315C FRAC Comment Review and Disposition

Wednesday, September 17

Plenary discussion
- DO–315C FRAC Comment Review and Disposition

Thursday, September 17

Plenary discussion
- DO–315C FRAC Comment Review and Disposition

Friday, September 18

Plenary discussion
- DO–315C FRAC Comment Review and Disposition
- Administrative items (new meeting location/dates, action items etc.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 30, 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–18517 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 232, Airborne Selective Calling Equipment

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

ACTION: Meeting notice of RTCA Special Committee 232, Airborne Selective Calling Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the first meeting of RTCA Special Committee 232, Airborne Selective Calling Equipment.

DATES: The meeting will be held September 3–5, from 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held at RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington DC 20036.

FOR FURTHER INFORMATION CONTACT: You may contact the RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site *http://www.rtca.org* for directions.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 216.

September 3–5

- Welcome/Introductions/ Administrative Remarks.
- Agenda Overview.
- RTCA Overview.
  - Background on RTCA, MOPS, and Process.
- Review of Selective Calling (SELCAL) Code Pool Expansion.
- SC–232 Scope and Terms of Reference.
- SC–232 Structure and Organization of Work.
- Other Business.
- Date and Place of Next Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 28, 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–18516 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Categorical Exclusion With Respect to the Willits Bypass Project, Willits, CA, and the Ryan Creek Fish Passage Mitigation Project

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that Federal actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 are final within the meaning of 23 U.S.C. 139 (*l*)(1). FHWA, on behalf of Caltrans, is issuing this notice to announce that, with respect to the State Route 101 Willits Bypass Project in Willits (Mendocino County), California, and the Ryan Creek Fish Passage Mitigation Project, a Categorical Exclusion was completed on June 3, 2014. The Categorical Exclusion was prepared in order to determine impacts of creating fish passage along Ryan Creek in Mendocino County, California, as part of the permit mitigation of the Willits Bypass Project. Based upon the analyses contained in the Categorical Exclusion, Caltrans has made the determination that the project will not have significant impacts to the environment.

FOR FURTHER INFORMATION CONTACT: John Webb, Supervisory Environmental Planner, California Department of Transportation, 703 B Street, Marysville, CA 95901, 530–741–4393, *John_Webb@dot.ca.gov.* Issued in Sacramento, California, July 30, 2014.

SUPPLEMENTARY INFORMATION: The Ryan Creek Fish Passage Mitigation Project is mandated as a condition of both the California Department of Fish and Wildlife June 2010 Section 1602 Streambed Alteration Agreement (1600–2010–0044–R1), as amended in March 2014, and the July 2010 Incidental Take Permit (No. 2081–2010–007–01), as amended in March 2014, issued for the Willits Bypass Project. These permits require Caltrans to improve fish passage within Ryan Creek by remediating existing barriers to fish passage where Ryan Creek flows beneath State Route (SR) 101, mitigating for the incidental take of individual Southern Oregon-Northern California Coasts (SONCC) Coho salmon. Caltrans proposes to replace the existing culverts along SR 101 at the South and North Forks of Ryan Creek to remediate existing barriers to fish passage.

The purpose of the Categorical Exclusion was to determine potential environmental impacts resulting from constructing fish passages along Ryan Creek in Mendocino County, California. Based upon the analyses contained in the Categorical Exclusion, Caltrans has made the determination that the project did not have significant impacts to the environment.

A claim seeking judicial review of the March 2014 Federal agency determination to not undertake a SEIS will be barred if the claim is not filed within 150 days of the initial publication of this notice in the **Federal Register**.

Copies of the Categorical Exclusion is available for review by appointment only at the following locations. Please call to make arrangements for viewing: Caltrans, District 3 Office, 703 B Street, Marysville, CA 95901, 530–741–4393, and Caltrans, District 3 Office, 2379 Gateway Oaks Drive, #150, Sacramento, CA, 916–274–0586.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 30, 2014.

Michael Duman,

Chief Operating Officer, Federal Highway Administration, Sacramento, California.

[FR Doc. 2014–18459 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

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

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting

TIME AND DATE: The meeting will be held on August 28, 2014, from 12:00 Noon to 3:00 p.m., Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: July 28, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–18563 Filed 8–1–14; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2014–0011–N–15]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting the information collection request (ICR) below for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 6, 2014.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0595.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Safety and Health Requirements Related to Camp Cars.

OMB Control Number: 2130–0595.

Abstract: To carry out a 2008 Congressional rulemaking mandate, FRA issued new regulations on October 31, 2011. See 76 FR 67073. New subpart E of part 228 prescribed minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees (covered-service employees) and individuals employed to maintain its right of way.

Under separate but related statutory authority, FRA also amended its regulations at 49 CFR part 228, subpart C regarding construction of employee sleeping quarters. In particular, FRA's existing guidelines with respect to the location, in relation to switching or humping of hazardous material, of a camp car that is occupied exclusively by individual's employed to maintain a railroad's right of way are being replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, FRA made miscellaneous changes to part 228, clarifying its provision on applicability, removing an existing provision on the pre-emptive effect of part 228 as unnecessary, and moving, without changing, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

The information collected under this rule is used by FRA to ensure that railroads operating camp cars comply with all the requirements mandated in this regulation in order to protect the health and safety of camp car occupants.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 1 Class I railroad.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.323—Copy—Water Hydrant/Hoses/Nozzle Inspections	1 railroad	740 Inspections	3 minutes	37
—Hydrant/Hoses/Nozzle Inspections—Records	1 railroad	740 Records	2 minutes	25

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Copy of records at Central Location	1 railroad	740 Record copies	10 seconds	2
—Training—For Individuals to Fill Potable Water Systems.	1 railroad	37 Trained employees	15 minutes	9
—Training Materials	1 railroad	1 Set of training materials	4 hours	4
—Certification from State/Local Health Authority	1 railroad	666 Certificates	1 hour	666
—Certification by Laboratory	1 railroad	74 Certificates	20 minutes	25
—Certification Copies	1 railroad	740 Certification copies	10 seconds	2
—Draining/Flushing and Record	1 railroad	111 Records	30 minutes	56
—Occupant Report of Taste Problem	1 railroad	10 Taste reports	10 seconds	.028
—Draining/Flushing and Record When Taste Report	1 railroad	10 Records	30 minutes	5
—Lab Tests from Taste Report	1 railroad	10 Tests/certificates	20 minutes	3
—Lab Report Copies	1 railroad	10 Lab report copies	2 minutes	.3333
—Signage (for Non-Potable Water)	1 railroad	740 Signs	2.5 minutes	31
228.331—First Aid and Life Safety:				
—Master Emergency Plan	1 railroad	1 Plan	1.5 hours	1.5
—Master Emergency Plan Copies	1 railroad	292 Copies	3 seconds	.2433
—Modified Emergency Preparedness Plans	1 railroad	740 Modified Plans	15 minutes	19
—Modified Emergency Preparedness Plan Copies	1 railroad	5,840 Plan Copies	3 seconds	5
228.333—Remedial Action				
—Oral Report of Needed Repair	1 railroad	30 Reports	10 seconds	.08333

Total Estimated Responses: 11,522.

Total Estimated Annual Burden: 892 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on July 31, 2014.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2014–18499 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

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 May 6, 2014 (79 FR 25984). The 60-day comment period ended on July 7, 2014. The agency received no comments.

DATES: Comments must be submitted on or before September 4, 2014.

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.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs, 1200 New Jersey Avenue SE., West Building, Room W43–443, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541 and Procedures for Selecting Lines to be Covered by The Theft Prevention Standard, 49 CFR Part 542 (OMB Clearance Number 2127–0539).

OMB Number: 2127–0539.

Type of Request: Extension of a currently approved information collection

Abstract: The Motor Vehicle Information and Cost Savings Act was amended by the Anti-Car Theft Act of 1992 (Pub. L. 102–519). The enacted Theft Act requires specified parts of high-theft vehicle to be marked with vehicle identification numbers. In a final rule published on April 6, 2004, the Federal Motor Vehicle Theft Prevention Standard (49 CFR Part 541) was extended to include all passenger cars, multipurpose passenger vehicles and light duty trucks (LDTs) determined to be high-theft (with a gross vehicle weight rating of 6,000 pounds or less) and light duty trucks having major parts that are interchangeable with a majority of the covered major parts of a passenger motor vehicle subject to the theft prevention standard. Each major component part must be either labeled or affixed with the VIN, and its replacement component part must be marked with the DOT symbol, the letter (R) and the manufacturers' logo.

The final rule became effective September 1, 2006.

The 1984 Theft Act, as amended by ACTA, requires NHTSA to promulgate a theft prevention standard for the designation of high-theft vehicle lines. The specific lines are to be selected by agreement between the manufacturer and the agency. If there is a disagreement of the selection, the statute states that the agency shall select

such lines and parts, after notice to the manufacturer and an opportunity for written comment. NHTSA's procedures for selecting high theft vehicle lines are contained in 49 CFR Part 542.

As a result of the April 2004 amendment, determination of high theft status is required only for new LDTs manufactured on or after September 1, 2006. There are seven vehicle manufacturers who produce LDTs. Generally, these manufacturers would not introduce more than one new LDT line in any year.

Affected Public: Vehicle manufacturers.

Estimated Total Annual Burden: The overall total estimated cost burden for this collection is approximately $82 million. The overall total estimated annual hour burden for this collection is 267, 356.

Under authority delegated in 49 CFR part 1.95.

David M. Hines,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–18440 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Tesla

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Tesla Motors Inc's., (Tesla) petition for an exemption of the Model X vehicle line in accordance with 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard). Tesla requested confidential treatment for specific information in its petition. The agency will address Tesla's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with the 2014 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated April 30, 2014, Tesla requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Model X vehicle line beginning with MY 2014. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR Part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Tesla provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Model X vehicle line. Tesla proposes to install a passive, transponder-based, electronic engine immobilizer device as standard equipment on its Model X vehicle line beginning with its MY 2014 vehicles. Key components of the antitheft device include an engine immobilizer, central body controller, security controller, gateway function, drive inverters and a passive entry transponder (PET). Tesla also stated that the new design of its immobilizer device will have enhanced security communication between its components, prevent tampering and provide additional features to enhance its overall effectiveness.

Tesla further stated that in addition to its immobilizer device, it will incorporate an audible alarm (horn) as standard equipment, but will not include a visual feature with the alarm system. Tesla stated that forced entry into the vehicle or any type of entry without the correct PET will trigger the audible alarm. Tesla further stated that in addition to an access through the doors, the alarm will also trigger when a break-in is attempted to either the front or rear cargo areas. Tesla further explained that its antitheft device will have a two-step activation process with a vehicle code query conducted at each stage. The first stage allows access to the vehicle when an authorization cycle occurs between the PET and the Security Controller, as long as the PET is in close proximity to the car and the driver either pushes the lock/unlock button on the key fob, pushes the exterior door handle to activate the handle sensors or inserts a hand into the handle to trigger the latch release. During the second stage, vehicle operation will be enabled when the driver has depressed the brake pedal and moves the gear selection stalk to drive or reverse. When one of these actions is performed, the security controller will poll to verify if the appropriate PET is inside the vehicle. Upon location of the PET, the security controller will run an authentication cycle with the key confirming the correct PET is being used inside the vehicle. Tesla stated that once authentication is successful, the security controller initiates a coded message through the gateway. If the code exchange matches the code stored in the drive inverters, the exchange will authorize the drive inverter to deactivate immobilization allowing the vehicle to be driven under its own power. Tesla stated that the immobilizer functions to ensure maximum theft protection when the immobilizer is active, the vehicle is off and the doors are locked. Tesla stated that it will incorporate an additional security measure that performs when the car is unlocked and immobilization is deactivated. Specifically, immobilization will reactivate when there are no user inputs to the vehicle within a programmed period of time. Tesla stated that any attempt to operate the vehicle without performing and completing each task, will render the vehicle inoperable.

Tesla's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6. In addressing the specific content requirements of 543.6, Tesla provided information on the reliability and durability of its proposed device. Tesla stated that the antitheft device will be upgraded with a more robust design than the antitheft device already installed as standard equipment on its Model S vehicle line. To ensure reliability and durability of the device, Tesla conducted tests based on its own specified standards. Tesla provided a detailed list of the tests conducted and stated that it believes that its device is reliable and durable because it complied with its design standards. Additionally, Tesla stated that it has also incorporated other measures of ensuring reliability and durability of the device to protect the immobilizer device from exposure to the elements and limits its access by unauthorized personnel. Additionally, Tesla stated that the immobilizer relies

on electronic functions and not mechanical functions, and therefore expects the components to last at least the life of the vehicle or longer.

Tesla also compared the device proposed for its vehicle line with other devices which NHTSA has already determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard (i.e., the Audi Q5, GM Cadillac SRX, Volvo XC90, Ford Lincoln MKX and the Toyota Lexus RX vehicle lines). Specifically, the agency's data show that using an average of 3 MYs (2009–2011) theft rate data, the average theft rates for the Audi Q5 is (0.5756), GM Cadillac SRX (0.5888), Volvo XC90 (0.2582), Ford Lincoln MKX (0.6046) and the Toyota Lexus RX (0.4034) which are all well below the median theft rate of 3.5826.

Based on the evidence submitted by Tesla, the agency believes that the antitheft device for the Model X vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Tesla has provided adequate reasons for its belief that the antitheft device for the Model X vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. This conclusion is based on the information Tesla provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Tesla's petition for exemption for the Model X vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2014 model year vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given MY. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Tesla decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Tesla wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to, but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Under authority delegated in 49 CFR part 1.95.

David M. Hines,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–18441 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Vehicle Theft Prevention Standard; Nissan North America, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Nissan North America, Inc.'s, (Nissan) petition for an exemption of the NV200 Taxi vehicle line in accordance with 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard). Nissan also requested confidential treatment of specific information in its petition. The agency will address Nissan's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with the 2015 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–443, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated May 30, 2014, Nissan requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Nissan NV200 Taxi vehicle line beginning with MY 2015. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the NV200 Taxi vehicle line. Nissan stated that the MY 2015 NV200 Taxi vehicle line will be equipped with a passive, transponder

based, electronic engine immobilizer antitheft device as standard equipment. Key components of its antitheft device will include a body control module (BCM), engine control module (ECM), security indicator light, immobilizer antenna, and a specially-designed key with a microchip. Nissan will not provide any visible or audible indication of unauthorized vehicle entry on the NV200 Taxi vehicle line. Nissan's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

The immobilizer device is automatically armed when the ignition switch is turned to the ''OFF'' position. Authentication to deactivate the immobilizer occurs when the doors are unlocked with the key, the correct key is inserted into the key cylinder and the ignition switch is turned to the ''ON'' position. Nissan stated that the immobilizer device prevents normal operation of the vehicle without using a specially-designed microchip key with a pre-registered ''Key-ID''. Specifically, Nissan stated that, when the key is inserted into the key cylinder and the ignition switch is turned to the ''ON'' position, the BCM generates an electric field between the immobilizer antenna and the microchip incorporated into the ignition key. The microchip in the key transmits the Key-ID to the BCM, beginning an encrypted communication process. If the Key-ID and encrypted code are correct, the ECM will allow the engine to keep running and the driver to operate the vehicle. If the Key-ID and encrypted code are not correct, the ECM will cause the engine to shut down.

In addressing the specific content requirements of § 543.6, Nissan provided information on the reliability and durability of its proposed device. Nissan stated that its antitheft device is tested for specific parameters to ensure its reliability and durability. Nissan provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Nissan further stated that its immobilizer device satisfies the European Directive ECE R116, including tamper resistance and that all control units for the device are located inside the vehicle, providing further protection from unauthorized accessibility of the device from outside the vehicle.

Nissan stated that the proposed device is functionally equivalent to the antitheft device installed on the Nissan Cube vehicle line which was granted a parts-marking exemption by the agency on April 14, 2010 (75 FR 19458). The agency notes that the theft rates for the Nissan Cube using an average of 3 MYs data (2009–2011), are 0.2124, 0.7728 and 1.1893 respectively.

Nissan provided data on the effectiveness of the antitheft device installed on its NV200 Taxi vehicle line in support of the belief that its antitheft device will be highly effective in reducing and deterring theft. Nissan referenced the National Insurance Crime Bureau's data which it stated showed a 70% reduction in theft when comparing MY 1997 Ford Mustangs (with a standard immobilizer) to MY 1995 Ford Mustangs (without an immobilizer). Nissan also referenced the Highway Loss Data Institute's data which reported that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Additionally, Nissan stated that theft rates for its Pathfinder vehicle experienced reductions from model year (MY) 2000 to 2001 with implementation of the engine immobilizer device as standard equipment and further significant reductions subsequent to MY 2001. Specifically, Nissan noted that the agency's theft rate data for MY's 2001 through 2006 reported theft rates of 1.9146, 1.8011, 1.1482, 0.8102, 1.7298 and 1.3474 respectively for the Nissan Pathfinder.

In support of its belief that its antitheft device will be as effective as compliance with the parts marking requirements in reducing and deterring vehicle theft, Nissan compared its device to other similar devices previously granted exemptions by the agency. Specifically, it referenced the agency's grant of full exemptions to General Motors Corporation for its Buick Riviera and Oldsmobile Aurora vehicle lines (58 FR 44872, August 25, 1993) and its Cadillac Seville vehicle line (62 FR 20058, April 24, 1997) from the parts-marking requirements of the theft prevention standard. Nissan stated that it believes that since its device is functionally equivalent to other comparable manufacturer's devices that have already been granted parts-marking exemptions by the agency, along with the evidence of reduced theft rates for vehicle lines equipped with similar devices and advanced technology of transponder electronic security, the Nissan immobilizer device will have the potential to achieve the level of effectiveness equivalent to those vehicles already exempted the agency. The agency agrees that the device is substantially similar to devices installed on other vehicle lines for which the agency has already granted exemptions.

Based on the supporting evidence submitted by Nissan on its device, the agency believes that the antitheft device for the NV200 Taxi vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that Nissan has provided adequate reasons for its belief that the antitheft device for the Nissan NV200 Taxi vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Nissan provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the Nissan NV200 Taxi vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Nissan decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked

according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Under authority delegated in 49 CFR part 1.95.

David M. Hines,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–18442 Filed 8–4–14; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 150 August 5, 2014

Part II

Securities and Exchange Commission

Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Scotia Sea and South Atlantic Ocean, September to October 2014; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD256

Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Scotia Sea and South Atlantic Ocean, September to October 2014

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

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the National Science Foundation (NSF) Division of Polar Programs, and Antarctic Support Contract (ASC) on behalf of two research institutions, University of Texas at Austin and University of Memphis, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a low-energy marine geophysical (seismic) survey in the Scotia Sea and South Atlantic Ocean, September to October 2014. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to NSF and ASC to incidentally harass, by Level B harassment only, 26 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than September 4, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* 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.

A copy of the application may be obtained by writing to the address specified above, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed by appointment, during regular business hours, at the aforementioned address.

NSF and ASC have prepared a ''Draft Initial Environmental Evaluation/Environmental Assessment to Conduct a Study of the Role of the Central Scotia Sea and North Scotia Ridge in the Onset and Development of the Antarctic Circumpolar Current'' (IEE/EA) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council of Environmental Quality (CEQ). It is posted at the foregoing site. NMFS will independently evaluate the IEE/EA and determine whether or not to adopt it. NMFS may prepare a separate NEPA analysis and incorporate relevant portions of the NSF and ASC's draft IEE/EA by reference. Information in the NSF and ASC's IHA application, EA and this notice collectively provide the environmental information related to proposed issuance of the IHA for public review and comment. NMFS will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the IHA request.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA, (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and 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.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 15, 2014, NMFS received an application from NSF and ASC requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a low-energy marine seismic survey in the Exclusive Economic Zone (EEZ) of the South Georgia and South Sandwich Islands and International Waters (i.e., high seas) in the Scotia Sea and southern Atlantic Ocean during September to October 2014.

The research would be conducted by two research institutions: University of Texas at Austin and University of Memphis. NSF and ASC plan to use one source vessel, the R/VIB *Nathaniel B. Palmer* (*Palmer*), and a seismic airgun array and hydrophone streamer to collect seismic data in the Scotia Sea and southern Atlantic Ocean. The vessel

would be operated by ASC, which operates the United States Antarctic Program (USAP) under contract with NSF. In support of the USAP, NSF and ASC plan to use conventional low-energy, seismic methodology to perform marine-based studies in the Scotia Sea, including evaluation of lithosphere adjacent to and beneath the Scotia Sea and southern Atlantic Ocean in two areas, the South Georgia micro-continent and the seafloor of the eastern portion of the central Scotia Sea (see Figures 1 and 2 of the IHA application). In addition to the proposed operations of the seismic airgun array and hydrophone streamer, NSF and ASC intend to operate a single-beam echosounder, multi-beam echosounder, acoustic Doppler current profiler (ADCP), and sub-bottom profiler continuously throughout the survey.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause behavioral disturbance for marine mammals in the proposed survey area. This is the principal means of marine mammal taking associated with these activities, and NSF and ASC have requested an authorization to take 26 species of marine mammals by Level B harassment. Take is not expected to result from the use of the single-beam echosounder, multi-beam echosounder, ADCP, and sub-bottom profiler, as the brief exposure of marine mammals to one pulse, or small numbers of signals, to be generated by these instruments in this particular case is not likely to result in the harassment of marine mammals. Also, NMFS does not expect take to result from collision with the source vessel because it is a single vessel moving at a relatively slow, constant cruise speed of 5 knots ([kts]; 9.3 kilometers per hour [km/hr]; 5.8 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 30 operational days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Proposed Specified Activity

Overview

NSF and ASC proposes to use one source vessel, the *Palmer,* a two GI airgun array and one hydrophone streamer to conduct the conventional seismic survey as part of the NSF-funded research project ''Role of Central Scotia Sea Floor and North Scotia Ridge in the Onset and Development of the Antarctic Circumpolar Current.'' In addition to the airguns, NSF and ASC intend to conduct a bathymetric survey, dredge sampling, and geodetic measurements from the *Palmer* during the proposed low-energy seismic survey.

Dates and Duration

The *Palmer* is expected to depart from Punta Arenas, Chile on approximately September 20, 2014 and arrive at Punta Arenas, Chile on approximately October 20, 2014. Research operations would be conducted over a span of 30 days, including to and from port. Some minor deviation from this schedule is possible, depending on logistics and weather (e.g., the cruise may depart earlier or be extended due to poor weather; or there could be additional days of seismic operations if collected data are deemed to be of substandard quality).

Specified Geographic Region

The proposed project and survey sites are located in selected regions of the Scotia Sea (located northeast of the Antarctic Peninsula) and the southern Atlantic Ocean and focus on two areas: (1) Between the central rise of the Scotia Sea and the East Scotia Sea, and (2) the far southern Atlantic Ocean immediately northeast of South Georgia towards the northeastern Georgia Rise (both encompassing the region between 53 to 58° South, and between 33 to 40° West) (see Figure 2 of the IHA application). The majority of the proposed seismic survey would be within the EEZ of the Government of the South Georgia and South Sandwich Islands (United Kingdom) and a limited portion of the seismic survey would be conducted in International Waters. Figure 3 of the IHA application illustrates the general bathymetry of the proposed study area and the border of the existing South Georgia Maritime Zone. Water depths in the survey area exceed 1,000 m. There is limited information on the depths in the study area and therefore more detailed information on bathymetry is not available. The proposed seismic survey would be within an area of approximately 3,953 km^2 (1,152.5 nmi^2). This estimate is based on the maximum number of kilometers for the seismic survey (2,950 km) multiplied by the predicted rms radii (m) based on modeling and empirical measurements (assuming 100% use of the two 105 in^3 GI airguns in greater than 1,000 m water depths), which was calculated to be 675 m (2,214.6 ft).

Detailed Description of the Proposed Specified Activity

NSF and ASC propose to conduct a low-energy seismic survey in the Scotia Sea and the southern Atlantic Ocean from September to October 2014. In addition to the low-energy seismic survey, scientific activities would include conducting a bathymetric profile survey of the seafloor using transducer-based instruments such as a multi-beam echosounder and sub-bottom profiler; collecting global positioning system (GPS) information through the temporary installation of three continuous Global Navigation Satellite Systems (cGNSS) on the South Georgia micro-continent; and collecting dredge sampling around the edges of seamounts or ocean floor with significant magnetic anomalies to determine the nature and age of bathymetric highs near the eastern edge of the central Scotia Sea. Water depths in the survey area are greater than 1,000 meters (m) (3,280.1 feet [ft]). The seismic survey is scheduled to occur for a total of approximately 325 hours over the course of the entire cruise, which would be for approximately 30 operational days in September to October 2014. The proposed seismic survey would be conducted during the day and night, and for up to 40 hours of continuous operations at a time. The operation hours and survey length would include equipment testing, ramp-up, line changes, and repeat coverage. The long transit time between port and the study site constrains how long the ship can be in the study area and effectively limits the maximum amount of time the airguns can operate. Some minor deviation from these dates would be possible, depending on logistics and weather.

The proposed survey of the Scotia Sea and southern Atlantic Ocean would involve conducting single channel seismic reflection profiling across the northern central Scotia Sea along two lines that cross the seismically active and apparently compressive boundary between the South Georgia micro-continent and the Northeast Georgia Rise. The targeted seismic survey would occur in the unexplored zones of elevated crust in the eastern central Scotia Sea and is designed to address several critical questions with respect to the tectonic nature of the northern and southern boundaries of the South Georgia micro-continent.

Opening of deep Southern Ocean gateways between Antarctica and South America and between Antarctica and Australia permitted complete circum-Antarctic circulation. This Antarctic Circumpolar Current is not well understood. The Antarctic Circumpolar Current may have been critical in the transition from a warm Earth in the early Cenozoic to the subsequent much

cooler conditions that persist to the present day. Opening of Drake Passage and the west Scotia Sea likely broke the final barrier formed by the Andes of Tierra del Fuego and the ''Antarctandes'' of the Antarctic Peninsula. Once this deep gateway, usually referred to as the Drake Passage gateway, was created, the strong and persistent mid-latitude winds could generate one of the largest deep currents on Earth, at approximately 135 Sverdrup (a Sverdrup [Sv] is a measure of average flow rate in million cubic meters of water per second). This event is widely believed to be closely associated in time with a major, abrupt drop in global temperatures and the rapid expansion of the Antarctic ice sheets at 33 to 34 Million Annus (Ma, i.e., million years from the present/before the current date), the Eocene-Oligocene boundary.

The events leading to the complete opening of the Drake Passage gateway are very poorly known. The uncertainty is due to the complex tectonic history of the Scotia Sea and its enclosing Scotia Ridge, the eastward-closing, locally emergent submarine ridge that joins the southernmost Andes to the Antarctic Peninsula and deflects the Antarctic Circumpolar Current through gaps in its northern limb. The critical keys to this problem are the enigmatic floor of the central Scotia Sea between the high relief South Georgia (approximately 3,000 m [9,842.5 ft]) and the lower South Orkney islands (approximately 1,200 m [3,937 ft]), emergent parts of micro-continental blocks on the North and South Scotia ridges respectively, and the North Scotia Ridge itself.

In 2008, an International Polar Year research program was conducted using the RVIB *Nathaniel B. Palmer* (*Palmer*) (Cruise NBP 0805) that was designed to elucidate the structure and history of this area to help provide the constraints necessary for understanding of the initiation of the critical Drake Passage—Scotia Sea gateway. Underway data and dredged samples produced unexpected results that led to a structurally different view of the central Scotia Sea and highlighted factors bearing on initiation of the Antarctic Circumpolar Current that had not been previously considered.

The results of this study of the central Scotia Sea are fragmentary due to the limited time available during Cruise NBP 0805. Therefore, the extent, geometry, and physiography of a submerged volcanic arc that may have delayed formation of a complete Antarctic Circumpolar Current until after the initiation of Antarctic glaciation are poorly defined, with direct dating limited to a few sites. To remedy these deficiencies, thereby further elucidating the role of the central Scotia Sea in the onset and development of the Antarctic Circumpolar Current, the proposed targeted surveying and dredging would determine likely arc constructs in the eastern central Scotia Sea. These would be combined with a survey of the margins of the South Georgia micro-continent and installation of three continuous GPS stations on South Georgia that would test the hypothesis regarding the evolution of the North Scotia Ridge, also an impediment to the present Antarctic Circumpolar Current. The Principal Investigators are Dr. Ian Dalziel and Dr. Lawrence Lawver of the University of Texas at Austin, and Dr. Robert Smalley of the University of Memphis.

The procedures to be used for the survey would be similar to those used during previous low-energy seismic surveys by NSF and would use conventional seismic methodology. The proposed survey would involve one source vessel, the *Palmer.* NSF and ASC would deploy a two Sercel Generator Injector (GI) airgun array (each with a discharge volume of 105 in^3 [1,720 cm^3], in one string, with a total volume of 210 in^3 [3,441.3 cm^3]) as an energy source, at a tow depth of up to 3 to 4 m (9.8 to 13.1 ft) below the surface (more information on the airguns can be found in Appendix B of the IHA application). A third airgun would serve as a ''hot spare'' to be used as a back-up in the event that one of the two operating airguns malfunctions. The airguns in the array would be spaced approximately 3 m (9.8 ft) apart and 15 to 40 m (49.2 to 131.2 ft) astern of the vessel. The receiving system would consist of one or two 100 m (328.1 ft) long, 24-channel, solid-state hydrophone streamer(s) towed behind the vessel. Data acquisition is planned along a series of predetermined lines, all of which would be in water depths greater than 1,000 m. As the GI airguns are towed along the survey lines, the hydrophone streamer(s) would receive the returning acoustic signals and transfer the data to the onboard processing system. All planned seismic data acquisition activities would be conducted by technicians provided by NSF and ASC, with onboard assistance by the scientists who have proposed the study. The vessel would be self-contained, and the crew would live aboard the vessel for the entire cruise.

The weather and sea conditions would be closely monitored, including for conditions that could limit visibility. Pack ice is not anticipated to be encountered during the proposed cruise; therefore, no icebreaking activities are expected. If situations are encountered which pose a risk to the equipment, impede data collection, or require the vessel to stop forward progress, the equipment would be shut-down and retrieved until conditions improve. In general, the airgun array and streamer(s) could be retrieved in less than 30 minutes.

The planned seismic survey (including equipment testing, start-up, line changes, repeat coverage of any areas, and equipment recovery) would consist of approximately 2,950 kilometers (km) (1,592.9 nautical miles [nmi]) of transect lines (including turns) in the survey area in the Scotia Sea and southern Atlantic Ocean (see Figures 1, 2, and 3 of the IHA application). In addition to the operation of the airgun array, a single-beam and multi-beam echosounder, ADCP, and a sub-bottom profiler would also likely be operated from the *Palmer* continuously throughout the cruise. There would be additional seismic operations associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In NSF and ASC's estimated take calculations, 25% has been added for those additional operations.

TABLE 1—PROPOSED LOW-ENERGY SEISMIC SURVEY ACTIVITIES IN THE SCOTIA SEA AND THE SOUTHERN ATLANTIC OCEAN

Survey length (km)	Cumulative duration (hr) [1]	Airgun array total volume	Time between airgun shots (distance)	Streamer length (m)
2,950 (1,592.9 nmi)	~325	2 × 105 in³ (2 × 1,720 cm³)	5 to 10 seconds (12.5 to 25 m or 41 to 82 ft).	100 (328.1 ft).

[1] Airgun operations are planned for no more than 40 continuous hours at a time.

Vessel Specifications

The *Palmer,* a research vessel owned by Edison Chouest Offshore, Inc. and operated by NSF and ACS (under a long-term charter with Edison Chouest Offshore, Inc.), would tow the two GI airgun array, as well as the hydrophone streamer. When the *Palmer* is towing the airgun array and the relatively short hydrophone streamer, the turning rate of the vessel while the gear is deployed is approximately 20 degrees per minute, which is much higher than the limit of 5 degrees per minute for a seismic vessel towing a streamer of more typical length (much greater than 1 km [0.5 nmi]). Thus, the maneuverability of the vessel is not limited much during operations with the streamer.

The U.S.-flagged vessel, built in 1992, has a length of 94 m (308.5 ft); a beam of 18.3 m (60 ft); a maximum draft of 6.8 m (22.5 ft); and a gross tonnage of 6,174. The ship is powered by four Caterpillar 3608 diesel engines (3,300 brake horsepower [hp] at 900 rotations per minute [rpm]) and a 1,400 hp flush-mounted, water jet azimuthing bowthruster. Electrical power is provided by four Caterpillar 3512, 1,050 kiloWatt (kW) diesel generators. The GI airgun compressor onboard the vessel is manufactured by Borsig-LMF Seismic Air Compressor. The *Palmer's* operation speed during seismic acquisition is typically approximately 9.3 km/hr (5 kts) (varying between 7.4 to 11.1 km/hr [4 to 6 kts]). When not towing seismic survey gear, the *Palmer* typically cruises at 18.7 km/hr (10.1 kts) and has a maximum speed of 26.9 km/hr (14.5 kts). The *Palmer* has an operating range of approximately 27,780 km (15,000 nmi) (the distance the vessel can travel without refueling), which is approximately 70 to 75 days. The vessel can accommodate 37 scientists and 22 crew members.

The vessel also has two locations as likely observation stations from which Protected Species Observers (PSO) would watch for marine mammals before and during the proposed airgun operations. Observing stations would be at the bridge level, with a PSO's eye level approximately 16.5 m (54.1 ft) above sea level and an approximately 270° view around the vessel, and an aloft observation tower that is approximately 24.4 m (80.1 ft) above sea level, is protected from the weather and has an approximately 360° view around the vessel. More details of the *Palmer* can be found in the IHA application and online at: *http://www.nsf.gov/geo/plr/support/nathpalm.jsp* and *http://www.usap.gov/vesselScienceAndOperations/contentHandler.cfm?id=1561.*

Acoustic Source Specifications—Seismic Airguns

The *Palmer* would deploy an airgun array, consisting of two 105 in³ Sercel GI airguns as the primary energy source and a 100 m streamer containing hydrophones. The airgun array would have a supply firing pressure of 2,000 pounds per square inch (psi) and 2,200 psi when at high pressure stand-by (i.e., shut-down). The regulator is adjusted to ensure that the maximum pressure to the GI airguns is 2,000 psi, but there are times when the GI airguns may be operated at pressures as low as 1,750 to 1,800 psi. Seismic pulses for the GI airguns would be emitted at intervals of approximately 5 seconds. At vessel speeds of approximately 9.3 km/hr, the shot intervals correspond to spacing of approximately 12.5 m (41 ft) during the study. During firing, a brief (approximately 0.03 second) pulse sound is emitted; the airguns would be silent during the intervening periods. The dominant frequency components range from two to 188 Hertz (Hz).

The GI airguns would be used in harmonic mode, that is, the volume of the injector chamber (I) of each GI airgun is equal to that of its generator chamber (G): 105 in³ (1,721 cm³) for each airgun. The generator chamber of each GI airgun in the primary source is the one responsible for introducing the sound pulse into the ocean. The injector chamber injects air into the previously-generated bubble to maintain its shape, and does not introduce more sound into the water. The airguns would fire the compressed air volume in unison in a harmonic mode. In harmonic mode, the injector volume is designed to destructively interfere with the reverberations of the generator (source component). Firing the airguns in harmonic mode maximizes resolution in the data and minimizes any excess noise in the water column or data caused by the reverberations (or bubble pulses). The two GI airguns would be spaced approximately 3 m (9.8 ft) apart, side-by-side, between 15 and 40 m (49.2 and 131.2 ft) behind the *Palmer,* at a depth of up to 3 to 4 m during the survey.

The Nucleus modeling software used at Lamont-Doherty Earth Observatory of Columbia University (L–DEO) does not include GI airguns as part of its airgun library, however signatures and mitigation models have been obtained for two 105 in³ G airguns at 3 m tow depth that are close approximations. For the two 105 in³ airgun array, the source output (downward) is 234.4 dB re 1 μPam 0-to-peak and 239.8 dB re 1 μPam for peak-to-peak. These numbers were determined applying the aforementioned G-airgun approximation to the GI airgun and using signatures filtered with DFS V out-256 Hz 72 dB/octave. The dominant frequency range would be 20 to 160 Hz for a pair of GI airguns towed at 3 m depth and 35 to 230 Hz for a pair of GI airguns towed at 2 m depth.

During the low-energy seismic survey, the vessel would attempt to maintain a constant cruise speed of approximately 5 knots. The airguns would operate continuously for no more than 40 hours at a time. The cumulative duration of the airgun operations would not exceed 325 hrs. The relatively short, 24-channel hydrophone streamer would provide operational flexibility to allow the seismic survey to proceed along the designated cruise track. The design of the seismic equipment is to achieve high-resolution images with the ability to correlate to the ultra-high frequency sub-bottom profiling data and provide cross-sectional views to pair with the seafloor bathymetry.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit

area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement and can be expressed as the peak, the peak-to-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water, which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor, and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal downward-directed source levels of the airgun arrays used by NSF and ASC on the *Palmer* do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined GI airguns. The actual received level at any location in the water near the GI airguns would not exceed the source level of the strongest individual source. In this case, that would be about 228.2 dB re 1 μPam peak or 233.5 dB re 1 μPam peak-to-peak for the two 105 in^3 airgun array. However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. Actual levels experienced by any organism more than 1 m from either GI airgun would be significantly lower.

Accordingly, L–DEO has predicted and modeled the received sound levels in relation to distance and direction from the two GI airgun array. A detailed description of L–DEO's modeling for this survey's marine seismic source arrays for protected species mitigation is provided in the NSF/USGS PEIS. These are the nominal source levels applicable to downward propagation. The NSF/USGS PEIS discusses the characteristics of the airgun pulses. NMFS refers the reviewers to that document for additional information.

Predicted Sound Levels for the Airguns

To determine buffer and exclusion zones for the airgun array to be used, received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 105 in^3 G airguns, in relation to distance and direction from the airguns (see Figure 2 in Attachment A of the IEE/EA). The model does not allow for bottom interactions, and is most directly applicable to deep water. Because the model results are for G airguns, which have more energy than GI airguns of the same size, those distances overestimate (by approximately 10%) the distances for the two 105 in^3 GI airguns. Although the distances are overestimated, no adjustments for this have been made to the radii distances in Table 2 (below). Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels of 190, 180, and 160 dB re 1 μPa (rms) are predicted to be received in deep water are shown in Table 2 (see Table 1 of Attachment A of the IEE/EA).

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010). Results of the 18 and 36 airgun array are not relevant for the two GI airguns to be used in the proposed survey because the airgun arrays are not the same size or volume. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). Measurements were not made for a two GI airgun array in deep water; however, NSF and ASC proposes to use the buffer and exclusion zones predicted by L–DEO's model for the proposed GI airgun operations in deep water, although they are likely conservative given the empirical results for the other arrays. Using the L–DEO model, Table 2 (below) shows the distances at which three rms sound levels are expected to be received from the two GI airguns. The 160 dB re 1 μPam (rms) is the threshold specified by NMFS for potential Level B (behavioral) harassment from impulsive noise for both cetaceans and pinnipeds. The 180 and 190 dB re 1 μPam (rms) distances are the safety criteria for potential Level A harassment as specified by NMFS (2000) and are applicable to cetaceans and pinnipeds, respectively. If marine mammals are detected within or about to enter the appropriate exclusion zone, the airguns would be shut-down immediately. Table 2 summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the two airgun array (each 105 in^3) operating in deep water (greater than 1,000 m [3,280 ft]) depths.

TABLE 2—PREDICTED AND MODELED (TWO 105 IN^3 GI AIRGUN ARRAY) DISTANCES TO WHICH SOUND LEVELS ≥160, 180, AND 190 dB RE 1 μPa (RMS) COULD BE RECEIVED IN DEEP WATER DURING THE PROPOSED LOW-ENERGY SEISMIC SURVEY IN THE SCOTIA SEA AND THE SOUTHERN ATLANTIC OCEAN, SEPTEMBER TO OCTOBER 2014

Source and total volume	Tow depth (m)	Water depth (m)	Predicted RMS radii distances (m) for 2 GI airgun array		
			160 dB	180 dB	190 dB
Two GI Airguns (105 in^3)	3 to 4	Deep (>1,000)	670 (2,198.2 ft)	100 (328.1 ft)	20* (65.6 ft)

*100 would be used for pinnipeds as well as cetaceans.

NMFS expects that acoustic stimuli resulting from the proposed operation of the two GI airgun array has the potential to harass marine mammals. NMFS does not expect that the movement of the *Palmer,* during the conduct of the low-energy seismic survey, has the potential to harass marine mammals because the relatively slow operation speed of the vessel (approximately 5 kts; 9.3 km/hr; 5.8 mph) during seismic acquisition should allow marine mammals to avoid the vessel.

Bathymetric Survey

Along with the low-energy airgun operations, other additional geophysical measurements would be made using swath bathymetry, backscatter sonar imagery, high-resolution sub-bottom profiling (''CHIRP''), imaging, and magnetometer instruments. In addition, several other transducer-based instruments onboard the vessel would be operated continuously during the cruise for operational and navigational purposes. During operations, when the vessel is not towing seismic equipment, its average speed would be approximately 10.1 kts (18.8 km/hr). Operating characteristics for the instruments to be used are described below.

Single-Beam Echosounder (Knudsen 3260)—The hull-mounted CHIRP sonar would be operated continuously during all phases of the cruise. This instrument is operated at 12 kHz for bottom-tracking purposes or at 3.5 kHz in the sub-bottom profiling mode. The sonar emits energy in a 30° beam from the bottom of the ship.

Single-Beam Echosounder (Bathy 2000)—The hull-mounted sonar characteristics of the Bathy 2000 are similar to the Knudsen 3260. Only one hull-mounted echosounder can be operated at a time, and this source would be operated instead of the Knudsen 3260 only if needed (i.e., only one would be in continuous operation during the cruise). The specific model to be used is expected to be selected by the scientific researchers.

Multi-Beam Sonar (Simrad EM120)—The hull-mounted multi-beam sonar would be operated continuously during the cruise. This instrument operates at a frequency of 12 kHz, has an estimated maximum source energy level of 242 dB re 1μPa (rms), and emits a very narrow (<2°) beam fore to aft and 150° in cross-track. The multi-beam system emits a series of nine consecutive 15 ms pulses.

Acoustic Doppler Current Profiler (ADCP Teledyne RDI VM–150)—The hull-mounted ADCP would be operated continuously throughout the cruise. The ADCP operates at a frequency of 150 kHz with an estimated acoustic output level at the source of 223.6 dB re 1μPa (rms). Sound energy from the ADCP is emitted as a 30° conically-shaped beam.

Acoustic Doppler Current Profiler (ADCP Ocean Surveyor OS–38)—The characteristics of this backup hull-mounted ADCP unit are similar to the Teledyne VM–150 and would be continuously operated.

Passive Instruments—During the seismic survey in the Scotia Sea and southern Atlantic Ocean, a precession magnetometer and Air-Sea gravity meter would be deployed. In addition, numerous (approximately 60) expendable bathythermograph (XBTs) probes would also be released (and none would be recovered) over the course of the cruise to obtain temperature data necessary to calculate sound velocity profiles used by the multi-beam sonar.

Dredge Sampling

The primary sampling goals involve the acquisition of in situ rock samples from deep marine rises (escarpments) at 3,000 to 4,000 m (9,842.5 to 13,123.4 ft) depths to determine the composition and age of the seafloor. Underway multi-beam and seismic data would be used to locate submarine outcrops. Dredging would be conducted upslope on escarpments. No dredging would be undertaken across the top of any seamounts, and final selection of dredge sites would include review to ensure that the tops of seamounts and corals in the area are avoided.

It is anticipated that researchers would survey and dredge two deep marine rises and one topographic high (see areas A and B in Figure 2 of the IHA application). There will be only six deployments of the dredge. The dredge buckets would be less than 1 m (3.28 ft) across and each sample area to be dredged would be no longer than approximately 1,000 m. Approximately 1,000 m^2 (10,763.9 ft^2) of seafloor would be disturbed by each deployment of the dredge at two different sites (resulting in a total of approximately 6,000 m^2 [64,583.46 ft^2] of affected seafloor for the proposed project). Six samples would be taken, with each dredge effort being 1,000 m^2 in length. Two samples would be collected from each of two locations (seamount sides) at Box A and two samples would be collected from one location at Box B (see Figure 2 of the IHA application).

TABLE 3—PROPOSED DREDGING ACTIVITIES IN THE SCOTIA SEA AND SOUTHERN ATLANTIC OCEAN

Sampling device	Area (see Figure 2 of the IHA application)	Number of deployments
Scripps Institution of Oceanography (SIO)-style Deep Sea Rock Dredge	A and B	3

The Government of South Georgia and South Sandwich Islands has established a large sustainable use Marine Protected Area covering over 1 million km^2 (291,553.35 nmi^2) of the South Georgia and South Sandwich Islands Maritime Zone. Activities within the Marine Protected Area are subject to the requirements of the current Management Plan (see Attachment C of the IHA application). The area was designated as a Marine Protected Area to ensure the protection and conservation of the resources and biodiversity and support important ecosystem roles, such as feeding areas for marine mammals, and penguins and other seabirds. Research activities, including trawling and sampling the seafloor, require application for a permit issued by the Government of South Georgia and South Sandwich Islands.

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) has adopted Conservation Measures 22–06, 22–07, and 22–09 to protect vulnerable marine ecosystems, which include seamounts, hydrothermal vents, cold water corals, and sponge fields. These measures apply to the entire proposed study area. Additionally, the area surrounding South Georgia Island was designated by CCAMLR as an Integrated Study Area to assist with the collection and management of information relating to the CCAMLR Ecosystem Monitoring Program. The Conservation Measure 22–07 includes mitigation and reporting requirements if vulnerable marine ecosystems are encountered. The science team would follow these requirements (see Attachment C of the IHA application) if vulnerable marine ecosystems are encountered while

sampling the sea bottom; however, the specific intent of the proposed dredging activities is to avoid obtaining material from the tops of seamounts.

Geodetic Measurements

Researchers would install three continuous Global Navigation Satellite System (cGNSS) stations on the South Georgia micro-continent (see Figure 3 of the IHA application). The cGNSS systems would collect GPS and meteorological data with daily data recovery using IRIDIUM-based communications. These stations would complement the cGNSS station installed at King Edward Point in Cumberland Bay on the northeastern side of the island (see the ''red star'' in Figure 3 of the IHA application). One station would be installed near Cooper Bay on the southeastern extremity of the island, the second station would be installed on a reef or islet between Cooper Bay and Annenkov Island, and the third station would be installed on Bird Island. The stations would be removed after three years of operation.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Various national Antarctic research programs (e.g., British Antarctic Survey, Australian Antarctic Division, and NMFS National Marine Mammal Laboratory), academic institutions (e.g., Duke University, University of St. Andrews, and Woods Hole Oceanographic Institution), and other organizations (e.g., South Georgia Museum, Fundacion Cethus, Whale and Dolphin Conservation, and New England Aquarium) have conducted scientific cruises and/or examined data on marine mammal sightings along the coast of Antarctica, south Atlantic Ocean, Scotia Sea, and around South Georgia and South Sandwich islands, and these data were considered in evaluating potential marine mammals in the proposed action area. Records from the International Whaling Commission's International Decade of Cetacean Research (IDCR), Southern Ocean Collaboration Program (SOC), and Southern Ocean Whale and Ecosystem Research (IWC–SOWER) circumpolar cruises were also considered.

The marine mammals that generally occur in the proposed action area belong to three taxonomic groups: Mysticetes (baleen whales), odontocetes (toothed whales), and pinnipeds (seals and sea lions). The marine mammal species that could potentially occur within the southern Atlantic Ocean in proximity to the proposed action area in the Scotia Sea include 32 species of cetaceans and 7 species of pinnipeds.

The waters of the Scotia Sea and southern Atlantic Ocean, especially those near South Georgia Island, are characterized by high biomass and productivity of phytoplankton, zooplankton, and vertebrate predators, and may be a feeding ground for many of these marine mammals (Richardson, 2012). In general, many of the species present in the sub-Antarctic study area may be present or migrating through the Scotia Sea during the proposed low-energy seismic survey. Many of the species that may be potentially present in the study area seasonally migrate to higher latitudes near Antarctica. In general, most large whale species (except for the killer whale) migrate north in the middle of the austral winter and return to Antarctica in the early austral summer.

The six species of pinnipeds that are found in the southern Atlantic Ocean and Southern Ocean and may be present in the proposed study area include the crabeater (*Lebodon carcinophagus*), leopard (*Hydrurga leptonyx*), Weddell (*Leptonychotes weddellii*), southern elephant (*Mirounga leonina*), Antarctic fur (*Arctocephalus gazella*), and Subantarctic fur (*Arctocephalus tropicalis*) seal. Many of these pinniped species breed on either the pack ice or subantarctic islands. The southern elephant seal and Antarctic fur seal have haul-outs and rookeries that are located on subantarctic islands and prefer beaches. The Ross seal (*Ommatophoca rossii*) is generally found in dense consolidated pack ice and on ice floes, but may migrate into open water to forage. This species' preferred habitat is not in the proposed study area, and thus it is not considered further in this document.

Marine mammal species likely to be encountered in the proposed study area that are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the southern right (*Eubalaena australis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale.

In addition to the 26 species known to occur in the Scotia Sea and the southern Atlantic Ocean, there are 14 cetacean species with ranges that are known to potentially occur in the waters of the study area: Pygmy right (*Caperea marginata*), Bryde's (*Balaenoptera brydei*), dwarf minke (*Balaenoptera acutorostrata* spp.), pygmy blue (*Balaenoptera musculus brevicauda*), pygmy sperm (*Kogia breviceps*), dwarf sperm (*Kogia sima*), Andrew's beaked (*Mesoplodon bowdoini*), Blainville's beaked (*Mesoplodon densirostris*), Hector's beaked (*Mesoplodon hectori*), and spade-toothed beaked (*Mesoplodon traversii*) whale, and Commerson's (*Cephalorhynchus commersonii*), Dusky (*Lagenorhynchus obscurus*), bottlenose (*Tursiops truncatus*), and Risso's (*Grampus griseus*) dolphin. However, these species have not been sighted and are not expected to occur where the proposed activities would take place. These species are not considered further in this document. Table 4 (below) presents information on the habitat, occurrence, distribution, abundance, population status, and conservation status of the species of marine mammals that may occur in the proposed study area during September to October 2014.

TABLE 4—THE HABITAT, OCCURRENCE, RANGE, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED LOW-ENERGY SEISMIC SURVEY AREA IN THE SCOTIA SEA AND SOUTHERN ATLANTIC OCEAN

[See text and Tables 6 and 7 in NSF and ASC's IHA application for further details]

Species	Habitat	Occurrence	Range	Population estimate	ESA [1]	MMPA [2]
Mysticetes:						
Southern right whale (*Eubalaena australis*).	Coastal, pelagic	Common	Circumpolar 20 to 55° South.	8,000 [3] to 15,000 [4]	EN	D
Pygmy right whale (*Caperea marginata*).	Coastal, pelagic	Rare	30 to 55° South	NA	NL	NC
Humpback whale (*Megaptera novaeangliae*).	Pelagic, nearshore waters, and banks.	Common	Cosmopolitan	35,000 to 40,000 [3]—Worldwide 9,484 [5]—Scotia Sea and Antarctica Peninsula.	EN	D

TABLE 4—THE HABITAT, OCCURRENCE, RANGE, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED LOW-ENERGY SEISMIC SURVEY AREA IN THE SCOTIA SEA AND SOUTHERN ATLANTIC OCEAN—Continued

[See text and Tables 6 and 7 in NSF and ASC's IHA application for further details]

Species	Habitat	Occurrence	Range	Population estimate	ESA [1]	MMPA [2]
Minke whale (*Balaenoptera acutorostrata* including dwarf sub-species).	Pelagic and coastal	Common	Circumpolar—Southern Hemisphere to 65° South.	NA	NL	NC
Antarctic minke whale (*Balaenoptera bonaerensis*).	Pelagic, ice floes	Common	7° South to ice edge (usually 20 to 65° South).	Several 100,000 [3]—Worldwide 18,125 [5]—Scotia Sea and Antarctica Peninsula.	NL	NC
Bryde's whale (*Balaenoptera brydei*).	Pelagic and coastal	Rare	Circumglobal 40° North to 40° South.	NA	NL	NC
Sei whale (*Balaenoptera borealis*).	Primarily offshore, pelagic.	Uncommon	Migratory, Feeding Concentration 40 to 50° South.	80,000 [3]—Worldwide	EN	D
Fin whale (*Balaenoptera physalus*).	Continental slope, pelagic.	Common	Cosmopolitan, Migratory	140,000 [3]—Worldwide 4,672 [5]—Scotia Sea and Antarctica Peninsula.	EN	D
Blue whale (*Balaenoptera musculus;* including pygmy blue whale [*Balaenoptera musculus brevicauda*]).	Pelagic, shelf, coastal	Uncommon	Migratory Pygmy blue whale—North of Antarctic Convergence 55° South.	8,000 to 9,000 [3]—Worldwide 1,700 [6]—Southern Ocean.	EN	D
Odontocetes:						
Sperm whale (*Physeter macrocephalus*).	Pelagic, deep sea	Common	Cosmopolitan, Migratory	360,000 [3]—Worldwide 9,500 [3]—Antarctic.	EN	D
Pygmy sperm whale (*Kogia breviceps*).	Pelagic, slope	Rare	Widely distributed in tropical and temperate zones.	NA	NL	NC
Dwarf sperm whale (*Kogia sima*)	Pelagic, slope	Rare	Widely distributed in tropical and temperate zones.	NA	NL	NC
Arnoux's beaked whale (*Berardius arnuxii*).	Pelagic	Common	Circumpolar in Southern Hemisphere, 24 to 78° South.	NA	NL	NC
Cuvier's beaked whale (*Ziphius cavirostris*).	Pelagic	Uncommon	Cosmopolitan	NA	NL	NC
Shepherd's beaked whale (*Tasmacetus shepherdi*).	Pelagic	Common	Circumpolar—south of 30° South.	NA	NL	NC
Southern bottlenose whale (*Hyperoodon planifrons*).	Pelagic	Common	Circumpolar—30° South to ice edge.	500,000 [3]—South of Antarctic Convergence.	NL	NC
Andrew's beaked whale (*Mesoplodon bowdoini*).	Pelagic	Rare	32 to 55° South	NA	NL	NC
Blainville's beaked whale (*Mesoplodon densirostris*).	Pelagic	Rare	Temperate and tropical waters worldwide.	NA	NL	NC
Gray's beaked whale (*Mesoplodon grayi*).	Pelagic	Common	30° South to Antarctic waters.	NA	NL	NC
Hector's beaked whale (*Mesoplodon hectori*).	Pelagic	Rare	Circumpolar—cool temperate waters of Southern Hemisphere.	NA	NL	NC
Spade-toothed beaked whale (*Mesoplodon traversii*).	Pelagic	Rare	Circumantarctic	NA	NL	NC
Strap-toothed beaked whale (*Mesoplodon layardii*).	Pelagic	Common	30° South to Antarctic Convergence.	NA	NL	NC
Killer whale (*Orcinus orca*)	Pelagic, shelf, coastal, pack ice.	Common	Cosmopolitan	80,000 [3]—South of Antarctic Convergence 25,000 [7]—Southern Ocean.	NL	NC
Long-finned pilot whale (*Globicephala melas*).	Pelagic, shelf, coastal	Common	Circumpolar—19 to 68° South in Southern Hemisphere.	200,000 [3 8]—South of Antarctic Convergence.	NL	NC
Risso's dolphin (*Grampus griseus*).	Shelf, slope, seamounts	Rare	60° North to 60° South	NA	NL	NC
Bottlenose dolphin (*Tursiops truncatus*).	Offshore, inshore, coastal, estuaries.	Rare	45° North to 45° South	>625,500 [3]—Worldwide	NL	NC
Southern right whale dolphin (*Lissodelphis peronii*).	Pelagic	Uncommon	12 to 65° South	NA	NL	NC
Peale's dolphin (*Lagenorhynchus australis*).	Coastal, continental shelf, islands.	Uncommon	33 to 60° South	NA 200—southern Chile [3]	NL	NC
Commerson's dolphin (Cephalorhynchus commersonii).	Coastal, continental shelf, islands.	Rare	South America Falkland Islands Kerguelen Islands.	3,200—Strait of Magellan [3].	NL	NC
Dusky dolphin (*Lagenorhynchus obscurus*).	Coastal, continental shelf and slope.	Rare	Widespread in Southern Hemisphere.	NA	NL	NC
Hourglass dolphin (*Lagenorhynchus cruciger*).	Pelagic, ice edge	Common	33° South to pack ice	144,000 [3]—South of Antarctic Convergence.	NL	NC
Spectacled porpoise (*Phocoena dioptrica*).	Coastal, pelagic	Uncommon	Circumpolar—Southern Hemisphere.	NA	NL	NC

TABLE 4—THE HABITAT, OCCURRENCE, RANGE, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED LOW-ENERGY SEISMIC SURVEY AREA IN THE SCOTIA SEA AND SOUTHERN ATLANTIC OCEAN—Continued

[See text and Tables 6 and 7 in NSF and ASC's IHA application for further details]

Species	Habitat	Occurrence	Range	Population estimate	ESA [1]	MMPA [2]
Pinnipeds:						
Crabeater seal (*Lobodon carcinophaga*).	Coastal, pack ice	Common	Circumpolar—Antarctic	5,000,000 to 15,000,000 [3 9].	NL	NC
Leopard seal (*Hydrurga leptonyx*).	Pack ice, sub-Antarctic islands.	Common	Sub-Antarctic islands to pack ice.	220,000 to 440,000 [3 10]	NL	NC
Ross seal (*Ommatophoca rossii*)	Pack ice, smooth ice floes, pelagic.	Rare	Circumpolar—Antarctic	130,000 [3], 20,000 to 220,000 [14].	NL	NC
Weddell seal (*Leptonychotes weddellii*).	Fast ice, pack ice, sub-Antarctic islands.	Uncommon	Circumpolar—Southern Hemisphere.	500,000 to 1,000,000 [3 11].	NL	NC
Southern elephant seal (*Mirounga leonina*).	Coastal, pelagic, sub-Antarctic waters.	Common	Circumpolar—Antarctic Convergence to pack ice.	640,000 [12] to 650,000 [3], 470,000—South Georgia Island [14].	NL	NC
Antarctic fur seal (*Arctocephalus gazella*).	Shelf, rocky habitats	Common	Sub-Antarctic islands to pack ice edge.	1,600,000 [13] to 3,000,000 [3].	NL	NC
Subantarctic fur seal (*Arctocephalus tropicalis*).	Shelf, rocky habitats	Uncommon	Subtropical front to sub-Antarctic islands and Antarctica.	Greater than 310,000 [3]	NL	NC

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] Jefferson *et al.,* 2008.
[4] Kenney, 2009.
[5] Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) survey area (Reilly *et al.,* 2004).
[6] Sears and Perrin, 2009.
[7] Ford, 2009.
[8] Olson, 2009.
[9] Bengston, 2009.
[10] Rogers, 2009.
[11] Thomas and Terhune, 2009.
[12] Hindell and Perrin, 2009.
[13] Arnould, 2009.
[14] Academic Press, 2009.

Refer to sections 3 and 4 of NSF and ASC's IHA application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the proposed project area. The IHA application also presents how NSF and ASC calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects of the Proposed Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., seismic airgun operation, vessel movement, gear deployment) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measureable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity would be carried out or the mitigation that would be implemented, and how either of those would shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document would include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, 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. The functional groups and the associated frequencies are indicated below (though 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 (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia* spp., the franciscana [*Pontoporia blainvillei*], and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Phocid pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz and 100 kHz;

• Otariid pinnipeds in water: Functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, 26 marine mammal species (20 cetacean and 6 pinniped species) are likely to occur in the proposed seismic survey area. Of the 20 cetacean species likely to occur in NSF and ASC's proposed action area, 7 are classified as low-frequency cetaceans (southern right, humpback, minke, Antarctic minke, sei, fin, and blue whale), 12 are classified as mid-frequency cetaceans (sperm, Arnoux's beaked, Cuvier's beaked, Shepherd's beaked, southern bottlenose, Gray's beaked, strap-toothed beaked, killer, and long-finned pilot whale, and southern right whale, Peale's, and hourglass dolphin), and 1 is classified as a high-frequency cetacean (spectacled porpoise) (Southall *et al.,* 2007). Of the 6 pinniped species likely to occur in NSF and ASC's proposed action area, 4 are classified as phocid pinnipeds (crabeater, leopard, Weddell, and southern elephant seal), and 2 are classified as otariid pinnipeds (Antarctic and Subantarctic fur seal) (Southall *et al.,* 2007). A species functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected. A more comprehensive review of these issues can be found in the ''Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement prepared for Marine Seismic Research that is funded by the National Science Foundation and conducted by the U.S. Geological Survey'' (NSF/USGS, 2011).

Tolerance

Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (i.e., the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions. The relative responsiveness of baleen and toothed whales are quite variable.

Masking

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

The airguns for the proposed low-energy seismic survey have dominant frequency components of 2 to 188 Hz. This frequency range fully overlaps the lower part of the frequency range of odontocete calls and/or functional hearing (full range about 150 Hz to 180 kHz). Airguns also produce a small portion of their sound at mid and high frequencies that overlap most, if not all, frequencies produced by odontocetes. While it is assumed that mysticetes can detect acoustic impulses from airguns and vessel sounds (Richardson *et al.,* 1995a), sub-bottom profilers, and most of the multi-beam echosounders would likely be detectable by some mysticetes based on presumed mysticete hearing sensitivity. Odontocetes are presumably more sensitive to mid to high frequencies produced by the multi-beam echosounders and sub-bottom profilers than to the dominant low frequencies produced by the airguns and vessel. A more comprehensive review of the relevant background information for odontocetes appears in Section 3.6.4.3, Section 3.7.4.3 and Appendix E of the NSF/USGS PEIS (2011).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (e.g., Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (e.g., Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the North Atlantic Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dilorio and Clark (2009) found evidence of increased calling by blue whales during operations by a lower-energy seismic source (i.e., sparker). Dolphins and porpoises commonly are heard calling while airguns are operating (e.g., Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

Pinnipeds have the most sensitive hearing and/or produce most of their sounds in frequencies higher than the

dominant components of airgun sound, but there is some overlap in the frequencies of the airgun pulses and the calls. However, the intermittent nature of airgun pules presumably reduces the potential for masking.

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example blue whales are found to increase call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Dilorio and Clark, 2009). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increased call frequency (Parks *et al.,* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *et al.,* 2000). In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). These behavioral reactions are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into the water from haul-outs or rookeries). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and/or reproduction. Some of these significant behavioral modifications include:

- Change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.,* 1995; Southall *et al.,* 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995; Gordon *et al.,* 2004). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray (*Eschrichtius robustus*) and bowhead (*Balaena mysticetus*) whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km (2.2 to 8.1 nmi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies have shown that some species of baleen whales, notably bowhead, gray, and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

Researchers have studied the responses of humpback whales to seismic surveys during migration, feeding during the summer months, breeding while offshore from Angola, and wintering offshore from Brazil. McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in^3) and to a single airgun (20 in^3) with source level of 227 dB re 1 μPa (p-p). In the 1998 study, they documented that avoidance reactions began at 5 to 8 km (2.7 to 4.3 nmi) from the array, and that those reactions kept most pods approximately 3 to 4 km (1.6 to 2.2 nmi) from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of 4 to 5 km (2.2 to 2.7 nmi) by traveling pods and 7 to 12 km (3.8 to 6.5 nmi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa (rms) for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 μPa (rms). The initial avoidance response generally occurred at distances of 5 to 8 km (2.7 to 4.3 nmi) from the airgun array and 2 km (1.1 nmi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa (rms).

Data collected by observers during several seismic surveys in the Northwest Atlantic showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback

whales were more likely to swim away and less likely to swim towards a vessel during seismic vs. non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed ''startled'' at received levels of 150 to 169 dB re 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa (rms). However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the Northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Studies have suggested that South Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was ''no observable direct correlation'' between strandings and seismic surveys (IWC, 2007: 236).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa (rms). Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (e.g., McDonald *et al.,* 1995; Dunn and Hernandez, 2009; Castellote *et al.,* 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting versus silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). Castellote *et al.* (2010) reported that singing fin whales in the Mediterranean moved away from an operating airgun array.

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and humpback whales) in the Northwest Atlantic found that overall, this group had lower sighting rates during seismic vs. non-seismic periods (Moulton and Holst, 2010). Baleen whales as a group were also seen significantly farther from the vessel during seismic compared with non-seismic periods, and they were more often seen to be swimming away from the operating seismic vessel (Moulton and Holst, 2010). Blue and minke whales were initially sighted significantly farther from the vessel during seismic operations compared to non-seismic periods; the same trend was observed for fin whales (Moulton and Holst, 2010). Minke whales were most often observed to be swimming away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2010). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above have been reported for toothed whales. However, there are recent systematic studies on sperm whales (e.g., Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009; Moulton and Holst, 2010).

Seismic operators and PSOs on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; Barkaszi *et al.,* 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (e.g., Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Stone and Tasker, 2006; Weir, 2008; Barry *et al.,* 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance. Captive bottlenose dolphins and beluga whales (*Delphinapterus leucas*) exhibited

changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results of porpoises depend on species. The limited available data suggest that harbor porpoises (*Phocoena phocoena*) show stronger avoidance of seismic operations than do Dall's porpoises (*Phocoenoides dalli*) (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (e.g., Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009). There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (e.g., Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (e.g., Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly. In fact, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the Northwest Atlantic; seven of those sightings were made at times when at least one airgun was operating. There was little evidence to indicate that beaked whale behavior was affected by airgun operations; sighting rates and distances were similar during seismic and non-seismic periods (Moulton and Holst, 2010).

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the ''Stranding and Mortality'' section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for the more responsive of some mysticetes. However, other data suggest that some odontocete species, including harbor porpoises, may be more responsive than might be expected given their poor low-frequency hearing. Reactions at longer distances may be particularly likely when sound propagation conditions are conducive to transmission of the higher frequency components of airgun sound to the animals' location (DeRuiter *et al.,* 2006; Goold and Coates, 2006; Tyack *et al.,* 2006; Potter *et al.,* 2007).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. In the Beaufort Sea, some ringed seals avoided an area of 100 m to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 656 ft) of the trackline as the operating airgun array passed by (e.g., Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005.). Ringed seal (*Pusa hispida*) sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

During seismic exploration off Nova Scotia, gray seals (*Halichoerus grypus*) exposed to noise from airguns and linear explosive charges did not react strongly (J. Parsons in Greene *et al.,* 1985). Pinnipeds in both water and air, sometimes tolerate strong noise pulses from non-explosive and explosive scaring devices, especially if attracted to the area for feeding and reproduction (Mate and Harvey, 1987; Reeves *et al.,* 1996). Thus pinnipeds are expected to be rather tolerant of, or habituate to, repeated underwater sounds from distant seismic sources, at least when the animals are strongly attracted to the area.

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (i.e., the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007). Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, i.e., permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold

rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 2 (above) presents the estimated distances from the *Palmer's* airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 and 190 dB re 1 μPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa (rms). NMFS believes that to avoid the potential for Level A harassment, cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa (rms), respectively. The established 180 and 190 dB (rms) criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. NMFS also assumes that cetaceans and pinnipeds exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment.

For toothed whales, researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. The experiments show that exposure to a single impulse at a received level of 207 kPa (or 30 psi, p-p), which is equivalent to 228 dB re 1 Pa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.,* 2002). For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales than those of odontocetes (Southall *et al.,* 2007).

In pinnipeds, researchers have not measured TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.,* 2007) which would be equivalent to a single pulse with a received level of approximately 181 to 186 dB re 1 μPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals (*Mirounga angustirostris*) are likely to be higher (Kastak *et al.,* 2005).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (e.g., Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals (Southall *et al.,* 2007). PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise times. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than 6 dB (Southall *et al.,* 2007). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes,

and some pinnipeds, are especially unlikely to incur non-auditory physical effects.

Stranding and Mortality—When a living 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 under the MMPA 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 is 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.''

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).

Strandings Associated with Military Active Sonar—Several sources have published lists of mass stranding events of cetaceans in an attempt to identify relationships between those stranding events and military active 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 and 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 mid-frequency active sonar and most involved beaked whales.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed to have been a contributing factor to strandings: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). Refer to Cox *et al.* (2006) for a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), and Canary Islands (2002); and Fernandez *et al.,* (2005) for an additional summary of the Canary Islands 2002 stranding event.

Potential for Stranding from Seismic Surveys—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used in marine waters for commercial seismic surveys or (with rare exceptions) for seismic research. These methods have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar (non-pulse sound) and, in one case, the co-occurrence of an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong ''pulsed'' sounds could also be susceptible to injury and/or behavioral reactions that can lead to stranding (e.g., Hildebrand, 2005; Southall *et al.,* 2007).

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to ''the bends''), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to expect that the same effects to marine mammals would result from military sonar and seismic surveys. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (e.g., Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any

physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources to be used in the proposed study and operated by NSF and ASC and those involved in the naval exercises associated with strandings.

Potential Effects of Other Acoustic Devices and Sources

Multi-Beam Echosounder

NSF and ASC would operate the Simrad EM120 multi-beam echosounder from the source vessel during the planned study. Sounds from the multi-beam echosounder are very short pulses, occurring for approximately 15 ms, depending on water depth. Most of the energy in the sound pulses emitted by the multi-beam echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of nine (in water greater than 1,000 m deep) consecutive successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Simrad EM120 are unlikely to be subjected to repeated pulses because of the narrow fore–aft width of the beam and would receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a multi-beam echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Simrad EM120; and (2) are often directed close to horizontally, as well as omnidirectional, versus more downward and narrowly for the multi-beam echosounder. The area of possible influence of the multi-beam echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During NSF and ASC's operations, the individual pulses would be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of a multi-beam echosounder on marine mammals are described below.

In 2013, an International Scientific Review Panel investigated a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system (Southall *et al.,* 2013) associated with the use of a high-frequency mapping system. The report indicated that the use of a 12 kHz multi-beam echosounder was the most plausible and likely initial behavioral trigger of the mass stranding event. This was the first time that a relatively high-frequency mapping sonar system has been associated with a stranding event. However, the report also notes that there were several site- and situation-specific secondary factors that may have contributed to the avoidance responses that lead to the eventual entrapment and mortality of the whales within the Loza Lagoon system (e.g., the survey vessel transiting in a north-south direction on the shelf break parallel to the shore may have trapped the animals between the sound source and the shore driving them towards the Loza Lagoon). The report concluded that for odontocete cetaceans that hear well in the 10 to 50 kHz range, where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low-frequency systems that have more typically been considered in terms of anthropogenic noise impacts (Southall *et al.,* 2013). However, the risk may be very low given the extensive use of these systems worldwide on a daily basis and the lack of direct evidence of such responses previously (Southall *et al.,* 2013).

Masking—Marine mammal communications would not be masked appreciably by the multi-beam echosounder signals, given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the multi-beam echosounder signals (12 kHz) generally do not overlap with the predominant frequencies in the calls (16 Hz to less than 12 kHz), which would avoid any significant masking (Richardson *et al.,* 1995).

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656.2 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 second tonal signals at frequencies similar to those that would be emitted by the multi-beam echosounder used by NSF and ASC, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from a multi-beam echosounder.

Hearing Impairment and Other Physical Effects—Given several stranding events that have been associated with the operation of naval sonar in specific circumstances, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the multi-beam echosounder proposed for use by NSF and ASC is quite different than sonar used for Navy operations. Pulse duration of the multi-beam echosounder is very short relative to the naval sonar. Also, at any given location, an individual marine mammal

would be in the beam of the multi-beam echosounder for much less time, given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the multi-beam echosounder rather drastically relative to that from naval sonar. NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the multi-beam echosounder in this particular case is not likely to result in the harassment of marine mammals.

Single-Beam Echosounder

NSF and ASC would operate the Knudsen 3260 and Bathy 2000 single-beam echosounders from the source vessel during the planned study. Sounds from the single-beam echosounder are very short pulses, depending on water depth. Most of the energy in the sound pulses emitted by the singlebeam echosounder is at frequencies near 12 kHz for bottom-tracking purposes or at 3.5 kHz in the sub-bottom profiling mode. The sonar emits energy in a 30° beam from the bottom of the ship. Marine mammals that encounter the Knudsen 3260 or Bathy 2000 are unlikely to be subjected to repeated pulses because of the relatively narrow fore–aft width of the beam and would receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a single-beam echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Knudsen 3260 or Bathy 2000; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the single-beam echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During NSF and ASC's operations, the individual pulses would be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of a single-beam echosounder on marine mammals are described below.

Masking—Marine mammal communications would not be masked appreciably by the single-beam echosounder signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the single-beam echosounder signals (12 or 3.5 kHz) do not overlap with the predominant frequencies in the calls (16 Hz to less than 12 kHz), which would avoid any significant masking (Richardson *et al.,* 1995).

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656.2 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz ADCP were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 second tonal signals at frequencies similar to those that would be emitted by the single-beam echosounder used by NSF and ASC, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from a single-beam echosounder.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the single-beam echosounder proposed for use by NSF and ASC is quite different than sonar used for Navy operations. Pulse duration of the single-beam echosounder is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the single-beam echosounder for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the single-beam echosounder rather drastically relative to that from naval sonar. NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the single-beam echosounder in this particular case is not likely to result in the harassment of marine mammals.

Acoustic Doppler Current Profilers

NSF and ASC would operate the ADCP Teledyne RDI VM–150 and ADCP Ocean Surveyor OS–38 from the source vessel during the planned study. Most of the energy in the sound pulses emitted by the ADCPs operate at frequencies near 150 kHz, and the maximum source level is 223.6 dB re 1 μPa (rms). Sound energy from the ADCP is emitted as a 30° conically-shaped beam. Marine mammals that encounter the ADCPs are unlikely to be subjected to repeated pulses because of the relatively narrow fore–aft width of the beam and would receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when the ADCPs emit a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the ADCPs; and (2) are often directed close to horizontally versus more downward for the ADCPs. The area of possible influence of the ADCPs is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During NSF and ASC's operations, the individual pulses would

be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of the ADCPs on marine mammals are described below.

Masking—Marine mammal communications would not be masked appreciably by the ADCP signals, given the low duty cycle of the ADCPs and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the ADCP signals (150 kHz) do not overlap with the predominant frequencies in the calls (16 Hz to less than 12 kHz), which would avoid any significant masking (Richardson *et al.,* 1995).

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz ''whale-finding'' sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656.2 ft) (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz ADCP were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 second tonal signals at frequencies similar to those that would be emitted by the ADCPs used by NSF and ASC, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an ADCP.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the ADCPs proposed for use by NSF and ASC is quite different than sonar used for Navy operations. Pulse duration of the ADCPs is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the ADCPs for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the ADCPs rather drastically relative to that from naval sonar. NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the ADCPs in this particular case is not likely to result in the harassment of marine mammals.

Dredging Activities

During dredging, the noise created by the mechanical action of the devices on the seafloor is expected to be perceived by nearby fish and other marine organisms and deter them from swimming toward the source. Dredging activities would be highly localized and short-term in duration and would not be expected to significantly interfere with marine mammal behavior. The potential direct effects include temporary localized disturbance or displacement from associated sounds and/or physical movement/actions of the operations. Additionally, the potential indirect effects may consist of very localized and transitory/short-term disturbance of bottom habitat and associated prey in shallow-water areas as a result of dredging (NSF/USGS PEIS, 2011). NMFS believes that the brief exposure of marine mammals to noise created from the mechanical action of the devices for dredging is not likely to result in the harassment of marine mammals.

The dredge would be attached to the main winch cable using a chain bridle. To dredge a rocky bottom, the dredge would be lowered slowly to the seafloor and the vessel would move slowly down the dredge line while paying out on the winch (30 m per minute). Then the vessel would hold station while slowly paying in the dredge to obtain the sample. This method allows NSF and ASC to manage the tension spikes if the dredge gets hung up or skips on the ocean bottom. The mechanical wire is protected with a weak link system and the cable is laid over an oversized head sheave for proper support of the wire. Each dredging effort would require approximately 6 hours; therefore, dredges would be in the water for a total of approximately 36 hours. The vessel speed would be less than 2 kts during dredge deployment and recovery, so the likelihood of a collision or entanglement with a marine mammal is very low.

Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. Both scenarios are discussed below in this section.

Behavioral Responses to Vessel Movement—There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals (especially low frequency specialists) may experience acoustic masking (Hildebrand, 2005) if they are present in the area (e.g., killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (e.g., whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003, 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003, 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.,* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.,* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales—''In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.''

Baleen whales—''When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often

exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.''

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal and physical status of the animal. For example, studies have shown that beluga whales' reaction varied when exposed to vessel noise and traffic. In some cases, beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (43.2 nmi) away and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were ''modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli.'' Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (e.g., approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; fin whales changed from mostly negative (e.g., avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that ''whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways.''

Although the radiated sound from the *Palmer* would be audible to marine mammals over a large distance, it is unlikely that marine mammals would respond behaviorally (in a manner that NMFS would consider harassment under the MMPA) to low-level distant shipping noise as the animals in the area are likely to be habituated to such noises (Nowacek *et al.,* 2004). In light of these facts, NMFS does not expect the *Palmer*'s movements to result in Level B harassment.

Vessel Strike—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 dolphins) 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 kts (24.1 km/hr, 14.9 mph).

NSF and ASC's proposed operation of one source vessel for the proposed low-energy seismic survey is relatively small in scale compared to the number of commercial ships transiting at higher speeds in the same areas on an annual basis. The probability of vessel and marine mammal interactions occurring during the proposed low-energy seismic survey is unlikely due to the *Palmer*'s slow operational speed, which is typically 5 kts. Outside of seismic operations, the *Palmer*'s cruising speed would be approximately 10.1 to 14.5 kts, which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist *et al.,* 2001).

As a final point, the *Palmer* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: The *Palmer*'s bridge and aloft observation tower offers good visibility to visually monitor for marine mammal presence; PSOs posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the PSOs receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed low-energy seismic survey would require towing approximately one or two 100 m cable streamers. This large of an array carries the risk of entanglement for marine mammals. Wildlife, especially slow moving individuals, such as large whales, have a low probability of becoming entangled due to slow speed of the survey vessel and onboard monitoring efforts. In May 2011, there was one recorded entanglement of an olive ridley sea turtle (*Lepidochelys olivacea*) in the R/V *Marcus G. Langseth*'s barovanes after the conclusion of a seismic survey off Costa Rica. There have been cases of baleen whales, mostly gray whales (Heyning, 1990), becoming entangled in fishing lines. The probability for entanglement of marine mammals is considered not significant because of the vessel speed and the monitoring efforts onboard the survey vessel.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring

and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (i.e. fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting airgun operations during the proposed low-energy seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals in any particular area of the approximately 3,953 km^2 proposed project area, previously discussed in this notice.

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish and invertebrate populations is limited. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (e.g., startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (i.e., mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale. This makes drawing conclusions about impacts on fish problematic because, ultimately, the most important issues concern effects on marine fish populations, their viability, and their availability to fisheries.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects—The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (e.g., predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as NSF, ASC, and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* [2003] and less than approximately 200 Hz in Popper *et al.* [2005]) likely did not propagate to the fish because the water in the study areas was very shallow (approximately nine m in the former case and less than two m in the latter). Water depth sets a lower limit on the lowest sound frequency that would propagate (the ''cutoff frequency'') at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

An experiment of the effects of a single 700 in^3 airgun was conducted in Lake Meade, Nevada (USGS, 1999). The data were used in an Environmental Assessment of the effects of a marine reflection survey of the Lake Meade

fault system by the National Park Service (Paulson *et al.,* 1993, in USGS, 1999). The airgun was suspended 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and was fired three successive times at a 30 second interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates were hired by USGS to monitor the effects of the surveys and concluded that airgun operations were not responsible for the death of any of the fish carcasses observed. They also concluded that the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (e.g., Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet. The seismic survey proposed using three vessels, each towing two four-airgun arrays ranging from 1,500 to 2,500 in^3. MMS noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary. MMS also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (e.g., demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix D of NSF/USGS's PEIS.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,*

2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim. Tenera Environmental (2011b) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.,* 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes.

Andre *et al.* (2011) exposed four species of cephalopods (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*), primarily cuttlefish, to two hours of continuous 50 to 400 Hz sinusoidal wave sweeps at 157+/−5 dB re 1 μPa while captive in relatively small tanks. They reported morphological and ultrastructural evidence of massive acoustic trauma (i.e., permanent and substantial alterations [lesions] of statocyst sensory hair cells) to the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low frequency sound. The received SPL was reported as 157+/−5 dB re 1 μPa, with peak levels at 175 dB re 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses (i.e., changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). It was noted however, than no behavioral impacts were exhibited by crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (e.g., squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (e.g., crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses (where relevant).

NSF and ASC reviewed the following source documents and have incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the ''Final Programmatic Environmental Impact Statement/ Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey;''

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, NSF, ASC, and their designees have proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones around the sound source;

(2) Speed and course alterations;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

Proposed Exclusion Zones—During pre-planning of the cruise, the smallest airgun array was identified that could be used and still meet the geophysical scientific objectives. NSF and ASC use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 2 (presented earlier in this document) shows the distances at which one would expect to receive three sound levels (160, 180, and 190 dB) from the two GI airgun array. The 180 and 190 dB level shut-down criteria are applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000). NSF and ASC used these levels to establish the exclusion and buffer zones.

Received sound levels have been modeled by L–DEO for a number of airgun configurations, including two 45 in^3 Nucleus G airguns, in relation to distance and direction from the airguns (see Figure 2 of the IHA application). In addition, propagation measurements of pulses from two GI airguns have been reported for shallow water (approximately 30 m [98.4 ft] depth) in the GOM (Tolstoy *et al.,* 2004). However, measurements were not made for the two GI airguns in deep water. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the modeling, estimates of the maximum distances from the GI airguns where sound levels are predicted to be 190, 180, and 160 dB re 1 μPa (rms) in shallow, intermediate, and deep water were determined (see Table 2 above).

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009). Results of the 18 and 36 airgun arrays are not relevant for the two GI airguns to be used in the proposed survey because the airgun arrays are not the same size or volume. The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). Measurements were not made for the two GI airgun array in deep water; however, NSF and ASC propose to use the safety radii predicted by L–DEO's model for the proposed GI airgun

operations in deep water, although they are likely conservative given the empirical results for the other arrays.

Based on the modeling data, the outputs from the pair of 105 in^3 GI airguns proposed to be used during the seismic survey are considered a low-energy acoustic source in the NSF/USGS PEIS (2011) for marine seismic research. A low-energy seismic source was defined in the NSF/USGS PEIS as an acoustic source whose received level at 100 m is less than 180 dB. The NSF/USGS PEIS also established for these low-energy sources, a standard exclusion zone of 100 m for all low-energy sources in water depths greater than 100 m. This standard 100 m exclusion zone would be used during the proposed low-energy seismic survey. The 180 and 190 dB (rms) radii are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish exclusion zones. Therefore, the assumed 180 and 190 dB radii are 100 m for intermediate and deep water. If the PSO detects a marine mammal within or about to enter the appropriate exclusion zone, the airguns would be shut-down immediately.

Speed and Course Alterations—If a marine mammal is detected outside the exclusion zone and, based on its position and direction of travel (relative motion), is likely to enter the exclusion zone, changes of the vessel's speed and/or direct course would be considered if this does not compromise operational safety or damage the deployed equipment. This would be done if operationally practicable while minimizing the effect on the planned science objectives. For marine seismic surveys towing large streamer arrays, course alterations are not typically implemented due to the vessel's limited maneuverability. However, the *Palmer* would be towing a relatively short hydrophone streamer, so its maneuverability during operations with the hydrophone streamer would not be limited as vessels towing long streamers, thus increasing the potential to implement course alterations, if necessary. After any such speed and/or course alteration is begun, the marine mammal activities and movements relative to the seismic vessel would be closely monitored to ensure that the marine mammal does not approach within the exclusion zone. If the marine mammal appears likely to enter the exclusion zone, further mitigation actions would be taken, including further speed and/or course alterations, and/or shut-down of the airgun(s). Typically, during seismic operations, the source vessel is unable to change speed or course, and one or more alternative mitigation measures would need to be implemented.

Shut-down Procedures—If a marine mammal is detected outside the exclusion zone for the airgun(s) and the vessel's speed and/or course cannot be changed to avoid having the animal enter the exclusion zone, NSF and ASC would shut-down the operating airgun(s) before the animal is within the exclusion zone. Likewise, if a marine mammal is already within the exclusion zone when first detected, the seismic source would be shut-down immediately.

Following a shut-down, NSF and ASC would not resume airgun activity until the marine mammal has cleared the exclusion zone. NSF and ASC would consider the animal to have cleared the exclusion zone if:

- A PSO has visually observed the animal leave the exclusion zone, or
- A PSO has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes and pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy and dwarf sperm, killer, and beaked whales).

Although power-down procedures are often standard operating practice for seismic surveys, they are not proposed to be used during this planned seismic survey because powering-down from two airguns to one airgun would make only a small difference in the exclusion zone(s) that probably would not be enough to allow continued one-airgun operations if a marine mammal came within the exclusion zone for two airguns.

Ramp-up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns and to provide the time for them to leave the area, avoiding any potential injury or impairment of their hearing abilities. NSF and ASC would follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down has exceeded that period. NSF and ASC propose that, for the present cruise, this period would be approximately 15 minutes. SIO, L–DEO, and USGS have used similar periods (approximately 15 minutes) during previous low-energy seismic surveys.

Ramp-up would begin with a single GI airgun (105 in^3). The second GI airgun (105 in^3) would be added after 5 minutes. During ramp-up, the PSOs would monitor the exclusion zone, and if marine mammals are sighted, a shut-down would be implemented as though both GI airguns were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, NSF and ASC would not commence the ramp-up. Given these provisions, it is likely that the airgun array would not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. A ramp-up from a shut-down may occur at night, but only where the exclusion zone is small enough to be visible. NSF and ASC would not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

Proposed Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

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 the accomplishment of one or more of the general goals listed below:

(1) Avoidance of minimization of injury or death of marine mammals

wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of airguns, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of time (total number or number at biologically important time or location) individuals would be exposed to received levels of airguns, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of airguns, or other activities, 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).

(5) Avoidance or minimization of 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.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. NSF and ASC submitted a marine mammal monitoring plan as part of the IHA application. It can be found in Section 13 of the IHA application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of sound (airguns) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to 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 stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information); and
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring

NSF and ASC propose to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring and to satisfy the anticipated monitoring requirements of the IHA. NSF and ASC's proposed ''Monitoring Plan'' is described below this section. NSF and ASC understand that this monitoring plan will be subject to review by NMFS and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. NSF and ASC is prepared to discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

PSOs would be based aboard the seismic source vessel and would watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups of the airguns at night. PSOs would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shut-down (i.e., greater than approximately 15 minutes for this proposed low-energy seismic survey). When feasible, PSOs would conduct observations during daytime periods when the seismic system is not operating (such as during transits) for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSO observations, the airguns would be shut-down when marine mammals are observed within or about to enter a designated exclusion zone. The exclusion zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the Scotia Sea and southern Atlantic Ocean, at least three PSOs would be based aboard the *Palmer*. At least one PSO would stand watch at all times while the *Palmer* is operating airguns during the proposed low-energy seismic survey; this procedure would also be followed when the vessel is in transit. NSF and ASC would appoint the PSOs with NMFS's concurrence. The lead PSO would be experienced with marine mammal species in the Scotia Sea, southern Atlantic Ocean, and/or Southern Ocean, the second and third PSOs would receive additional specialized training from the lead PSO to ensure that they can identify marine mammal species commonly found in the Scotia Sea and southern Atlantic Ocean. Observations would take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, at least one PSO would be on duty from observation platforms (i.e., the best available vantage point on the

source vessel) to monitor marine mammals near the seismic vessel. PSO(s) would be on duty in shifts no longer than 4 hours in duration. Other crew would also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the low-energy seismic survey, the crew would be given additional instruction on how to do so.

The *Palmer* is a suitable platform for marine mammal observations and would serve as the platform from which PSOs would watch for marine mammals before and during seismic operations. Two locations are likely as observation stations onboard the *Palmer.* One observing station is located on the bridge level, with the PSO eye level at approximately 16.5 m (54.1 ft) above the waterline and the PSO would have a good view around the entire vessel. In addition, there is an aloft observation tower for the PSO approximately 24.4 m (80.1 ft) above the waterline that is protected from the weather, and affords PSOs an even greater view. The approximate view around the vessel from the bridge is 270° and from the aloft observation tower is 360°.

Standard equipment for PSOs would be reticle binoculars. Night-vision equipment would not be available. The PSOs would be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shut-down. During daytime, the PSO(s) would scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon FMTRC–SX) and the naked eye. These binoculars would have a built-in daylight compass. Estimating distances is done primarily with the reticles in the binoculars. The PSO(s) would be in direct (radio) wireless communication with ship's officers on the bridge and scientists in the vessel's operations laboratory during seismic operations, so they can advise the vessel operator, science support personnel, and the science party promptly of the need for avoidance maneuvers or a shut-down of the seismic source.

When a marine mammal is detected within or about to enter the designated exclusion zone, the airguns would immediately be shut-down, unless the vessel's speed and/or course can be changed to avoid having the animal enter the exclusion zone. The PSO(s) would continue to maintain watch to determine when the animal is outside the exclusion zone by visual confirmation. Airgun operations would not resume until the animal is confirmed to have left the exclusion zone, or is not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, killer, and beaked whales).

PSO Data and Documentation

PSOs would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data would be used to estimate numbers of animals potentially ''taken'' by harassment (as defined in the MMPA). They would also provide information needed to order a shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations would also be made during daytime periods when the *Palmer* is underway without seismic operations (i.e., transits to, from, and through the study area) to collect baseline biological data.

When a sighting is made, the following information about the sighting would be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, wind force, visibility, and sun glare.

The data listed under (2) would also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding ramp-ups or shut-downs would be recorded in a standardized format. Data would be entered into an electronic database. The data accuracy would be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database by the PSOs at sea. These procedures would allow initial summaries of data to be prepared during and shortly after the field program, and would facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations would provide the following information:

1. The basis for real-time mitigation (airgun shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Proposed Reporting

NSF and ASC would submit a comprehensive report to NMFS within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report submitted to NMFS would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations and all marine mammal sightings (i.e., dates, times, locations, activities, and associated seismic survey activities). The report would include, at a minimum:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for Beaufort sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including Beaufort sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals sightings including date, water depth, numbers, age/size/gender, and group sizes, and analyses of the effects of seismic operations;
- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report would also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in

other ways. NMFS would review the draft report and provide any comments it may have, and NSF and ASC would incorporate NMFS's comments and prepare a final report. After the report is considered final, it would be publicly available on the NMFS Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), NSF and ASC would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov.* The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with NSF and ASC to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NSF and ASC may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that NSF and ASC discover an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition), NSF and ASC shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov.* The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS shall work with NSF and ASC to determine whether modifications in the activities are appropriate.

In the event that NSF and ASC discover an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate or advanced decomposition, or scavenger damage), NSF and ASC shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* within 24 hours of discovery. NSF and ASC shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

TABLE 5—NMFS'S CURRENT UNDERWATER ACOUSTIC EXPOSURE CRITERIA

Impulsive (non-explosive) sound		
Criterion	Criterion definition	Threshold
Level A harassment (injury)	Permanent threshold shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 μPa–m (root means square [rms]) (cetaceans) 190 dB re 1 μPa–m (rms) (pinnipeds).
Level B harassment	Behavioral disruption (for impulsive noise)	160 dB re 1 μPa–m (rms).
Level B harassment	Behavioral disruption (for continuous noise)	120 dB re 1 μPa–m (rms).

Level B harassment is anticipated and proposed to be authorized as a result of the proposed low-energy seismic survey in the Scotia Sea and southern Atlantic Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array are expected to result in the behavioral disturbance of some marine mammals. There is no evidence that the planned activities for which NSF and ASC seek the IHA could result in injury, serious injury, or mortality. The required mitigation and monitoring measures would minimize any potential risk for injury, serious injury, or mortality.

The following sections describe NSF and ASC's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed low-energy seismic survey in the Scotia Sea and southern Atlantic Ocean. The estimates are based on a consideration of the number of marine mammals that could be harassed during the approximately 325 hours and 2,950 km of seismic airgun operations with the two GI airgun array to be used.

During simultaneous operations of the airgun array and the other sound sources, any marine mammals close enough to be affected by the single and multi-beam echosounders, ADCP, or sub-bottom profiler would already be affected by the airguns. During times when the airguns are not operating, it is unlikely that marine mammals would exhibit more than minor, short-term responses to the echosounders, ADCPs, and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Therefore, for this activity, take was not authorized specifically for these sound sources beyond that which is already proposed to be authorized for airguns.

There are no stock assessments and very limited population information available for marine mammals in the Scotia Sea and southern Atlantic Ocean. Published estimates of marine mammal densities are limited for the proposed low-energy seismic survey's action area. Available density estimates from the Naval Marine Species Density Database (NMSDD) (NAVFAC, 2012) were used for 5 mysticetes and eight odontocetes. Density of spectacled porpoise was based on the density reported in Santora *et al.* (2009; as reported in NOAA SWFSC, 2013). Densities for minke (including the dwarf sub-species) whales and Subantarctic fur seals were unavailable and the densities for Antarctic minke whales and Antarctic fur seals were used as proxies, respectively.

For other mysticetes and odontocetes, reported sightings data from two previous research surveys in the Scotia Sea and vicinity were used to identify species that may be present in the proposed action area and to estimate densities. While these surveys were not specifically designed to quantify marine mammal densities, there was sufficient information to develop density estimates. The data collected for the two studies were in terms of animals sighted per time unit, and the sighting data were then converted to an areal density (number of animals per square km) by multiplying the number of animals observed by the estimated area observed during the survey.

Some marine mammals that were present in the area may not have been observed. Southwell *et al.* (2008) suggested a 20 to 40% sighting factor for pinnipeds, and the most conservative value from Southwell *et al.* (2008) was applied for cetaceans. Therefore, the estimated frequency of sightings data in this proposed IHA for cetaceans incorporates a correction factor of 5, which assumes only 20% of the animals present were reported due to sea and other environmental conditions that may have hindered observation, and therefore, there were 5 times more cetaceans actually present. The correction factor (20%) was intended to conservatively account for unobserved animals.

Sighting data collected during the 2003 RRS James Clark Ross Cruise JR82 (British Antarctic Survey, undated) were used as the basis to estimate densities for four species: Southern right whale, southern bottlenose whale, hourglass dolphin, and Peale's dolphin. The cruise length was 4,143 km (2,237 nmi); however, lateral distance from the vessel where cetaceans were viewed was not identified in the report. Therefore, it was assumed that all species were sighted within 2.5 km (1.4 nmi) of the vessel (5 km [2.7 nmi] width) because this was the assumed sighting distance (half strip width). This resulted in a survey area of 20,715 km^2 (6,039 nmi^2). Density of the strap-toothed beaked whale was based on sighting data reported in Rossi-Santos *et al.* (2007). The survey length was 1,296 km (699.8 nmi); however, lateral distance from the vessel where cetaceans were sighted was not identified in the report. Therefore, it was assumed that all species were sighted within 2.5 km of the vessel (5 km width) because this was assumed as a conservative distance where cetaceans could be consistently observed. This width was needed to calculate densities from data sources where only cruise distance and animal numbers were available in the best available reports. This resulted in a survey area of 6,480 km^2 (1,889.3 nmi^2)

With respect to pinnipeds, one study (Santora *et al.,* 2009 as reported in NOAA SWFSC, 2013) provided a density estimate for southern elephant seals. No other studies in the region of the Scotia Sea provided density estimates for pinnipeds. Therefore, reported sighting data from two previous research surveys in the Scotia Sea and vicinity were used to identify species that may be present and to estimate densities. Sighting data collected during the 2003 RRS James Clark Ross Cruise JR82 (British Antarctic Survey, undated) were used as the basis to estimate densities for four species: Antarctic fur seal, crabeater seal, leopard seal, and Weddell seal. The survey length was 4,143 km (1,207.9 nmi); however, lateral distance from the vessel where pinnipeds were viewed was not identified in the report. Therefore, it was assumed that all species were sighted within 0.4 km (0.2 nmi) of the vessel (0.8 km [0.4 nmi] width), based on Southwell *et al.* (2008). This resulted in a survey area of 3,315 km^2 (966.5 nmi^2).

Some pinnipeds that were present in the area during the British Antarctic Survey cruise may not have been observed. Therefore, a correction factor of 1.66 was applied to the pinniped density estimates, which assumes 66% more animals than observed were present and potentially may have been in the water. This conservative correction factor takes into consideration that pinnipeds are relatively difficult to observe in the water due to their small body size and surface behavior, and some pinnipeds may not have been observed due to poor visibility conditions.

The pinnipeds that may be present in the study area during the proposed action and are expected to be observed occur mostly near pack ice, coastal areas, and rocky habitats on the shelf, and are not prevalent in open sea areas where the low-energy seismic survey would be conducted. Because density estimates for pinnipeds in the sub-Antarctic and Antarctic regions typically represent individuals that have hauled-out of the water, those estimates are not necessarily representative of individuals that are in the water and could be potentially exposed to underwater sounds during the seismic airgun operations; therefore, the pinniped densities have been adjusted downward to account for this consideration. Take was not requested for Ross seals because preferred habitat for this species is not within the proposed action area. Although there is some uncertainty about the representativeness of the data and the assumptions used in the calculations below, the approach used here is believed to be the best available approach, using the best available science.

TABLE 6—ESTIMATED DENSITIES AND POSSIBLE NUMBER OF MARINE MAMMAL SPECIES THAT MIGHT BE EXPOSED TO GREATER THAN OR EQUAL TO 160 dB (AIRGUN OPERATIONS) DURING NSF AND ASC'S PROPOSED LOW-ENERGY SEISMIC SURVEY (APPROXIMATELY 2,950 km OF TRACKLINES/APPROXIMATELY 3,953 km^2 [0.67 km X 2 X 2,950 km] ENSONIFIED AREA FOR AIRGUN OPERATIONS) IN THE SCOTIA SEA AND SOUTHERN ATLANTIC OCEAN, SEPTEMBER TO OCTOBER 2014

Species	Density (# of animals/km^2)[1]	Calculated take from seismic airgun operations (i.e., estimated number of individuals exposed to sound levels ≥160 dB re 1 μPa)[2]	Requested take authorization	Abundance[3]	Approximate percentage of population estimate (requested take)[4]	Population trend[5]
Mysticetes:						
Southern right whale	0.0079652	31	31	8,000 to 15,000	0.39	Increasing at 7 to 8% per year.
Humpback whale	0.0006610	3	3	35,000 to 40,000—Worldwide; 9,484—Scotia Sea and Antarctica Peninsula.	0.03	Increasing.
Antarctic minke whale	0.1557920	616	616	Several 100,000—Worldwide; 18,125—Scotia Sea and Antarctica Peninsula.	3.4	Stable.
Minke whale (including dwarf minke whale sub-species).	0.1557920	616	616	NA	NA	NA.
Sei whale	0.0063590	25	25	80,000—Worldwide	0.03	NA.
Fin whale	0.0182040	72	72	140,000—Worldwide; 4,672—Scotia Sea and Antarctica Peninsula.	1.54	NA.
Blue whale	0.0000510	1	1	8,000 to 9,000—Worldwide.	0.01	NA.
Odontocetes:						
Sperm whale	0.0020690	8	8	360,000—Worldwide; 9,500—Antarctic.	<0.01	NA.
Arnoux's beaked whale	0.0113790	45	45	NA	NA	NA.
Cuvier's beaked whale	0.000548	3	3	NA	NA	NA.
Gray's beaked whale	0.0018850	7	7	NA	NA	NA.
Shepherd's beaked whale.	0.0092690	37	37	NA	NA	NA.
Strap-toothed beaked whale.	0.0007716	3	3	NA	NA	NA.
Southern bottlenose whale.	0.0089307	35	35	50,000—South of Antarctic Convergence.	0.07	NA.
Killer whale	0.0153800	61	61	80,000—South of Antarctic Convergence.	0.08	NA.
Long-finned pilot whale	0.2145570	848	848	200,000—South of Antarctic Convergence.	0.42	NA.
Peale's dolphin	0.0026551	10	10	NA—Worldwide; 200—southern Chile[3].	NA 5	NA.
Hourglass dolphin	0.0154477	61	61	144,000	0.04	NA.
Southern right whale dolphin.	0.0061610	24	24	NA	NA	NA.
Spectacled porpoise	0.0015000	6	6	NA	NA	NA.
Pinnipeds:						
Crabeater seal	0.0185313	73	73	5,000,000 to 15,000,000.	<0.01	Increasing.
Leopard seal	0.0115194	46	46	220,000 to 440,000	0.02	NA.
Weddell seal	0.0027447	11	11	500,000 to 1,000,000	<0.01	NA.
Southern elephant seal	0.0003000	1	1	640,000 to 650,000—Worldwide; 470,000—South Georgia Island.	<0.01	Increasing, decreasing, or stable depending on breeding population.
Antarctic fur seal	0.5103608	2,017	2,017	1,600,000 to 3,000,000	0.13	Increasing.
Subantarctic fur seal	0.5103608	2,017	2,017	>310,000	0.65	Increasing.

NA = Not available or not assessed.

[1] Sightings from a 47 day (7,560 km) period on the RRS *James Clark Ross* JR82 survey during January to February 2003 and sightings from a 34 day (1,296 km) period on the *Kotic* II from January to March 2006.

[2] Calculated take is estimated density (reported density times correction factor) multiplied by the area ensonified to 160 dB (rms) around the planned seismic lines, increased by 25% for contingency.
[3] See population estimates for marine mammal species in Table 4 (above).
[4] Total requested authorized takes expressed as percentages of the species or regional populations.
[5] Jefferson *et al.* (2008).
Note: Take was not requested for Ross seals because preferred habitat for these species is not within the proposed action area.

Numbers of marine mammals that might be present and potentially disturbed are estimated based on the available data about marine mammal distribution and densities in the proposed Scotia Sea and southern Atlantic Ocean study area. NSF and ASC estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) for seismic airgun operations on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals in the area (in the absence of the a seismic survey). The number of possible exposures can be estimated by considering the total marine area that would be within the 160 dB radius (the diameter is 670 m times 2) around the operating airguns. The 160 dB radii are based on acoustic modeling data for the airguns that may be used during the proposed action (see Attachment B of the IHA application). As summarized in Table 2 (see Table 8 of the IHA application), the modeling results for the proposed low-energy seismic airgun array indicate the received levels are dependent on water depth. Since the majority of the proposed airgun operations would be conducted in waters greater than 1,000 m deep, the buffer zone of 670 m for the two 105 in^3 GI airguns was used.

The number of different individuals potentially exposed to received levels greater than or equal to 160 dB re 1 μPa (rms) from seismic airgun operations was calculated by multiplying:

(1) The expected species density (in number/km^2), times

(2) The anticipated area to be ensonified to that level during airgun operations.

Applying the approach described above, approximately 3,953 km^2 (including the 25% contingency) would be ensonified within the 160 dB isopleth for seismic airgun operations on one or more occasions during the proposed survey. The take calculations within the study sites do not explicitly add animals to account for the fact that new animals (i.e., turnover) not accounted for in the initial density snapshot could also approach and enter the area ensonified above 160 dB for seismic airgun operations. However, studies suggest that many marine mammals would avoid exposing themselves to sounds at this level, which suggests that there would not necessarily be a large number of new animals entering the area once the seismic survey started. Because this approach for calculating take estimates does not account for turnover in the marine mammal populations in the area during the course of the proposed survey, the actual number of individuals exposed may be underestimated. However, any underestimation is likely offset by the conservative (i.e., probably overestimated) line-kilometer distances (including the 25% contingency) used to calculate the survey area, and the fact the approach assumes that no cetaceans or pinnipeds would move away or toward the tracklines as the *Palmer* approaches in response to increasing sound levels before the levels reach 160 dB for seismic airgun operations, which is likely to occur and which would decrease the density of marine mammals in the survey area. Another way of interpreting the estimates in Table 6 is that they represent the number of individuals that would be expected (in absence of a seismic program) to occur in the waters that would be exposed to greater than or equal to 160 dB (rms) for seismic airgun operations.

NSF and ASC's estimates of exposures to various sound levels assume that the proposed seismic survey would be carried out in full; however, the ensonified areas calculated using the planned number of line-kilometers has been increased by 25% to accommodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions would be likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The estimates of the numbers of marine mammals potentially exposed to 160 dB (rms) received levels are precautionary and probably overestimate the actual numbers of marine mammals that could be involved. These estimates assume that there would be no weather, equipment, or mitigation delays that limit the seismic operations, which is highly unlikely.

Table 6 shows the estimates of the number of different individual marine mammals anticipated to be exposed to greater than or equal to 160 dB re 1 μPa (rms) for seismic airgun operations during the low-energy seismic survey if no animals moved away from the survey vessel. The total requested take authorization is given in the middle column (fourth from the right) of Table 6.

Encouraging and Coordinating Research

NSF and ASC would coordinate the planned marine mammal monitoring program associated with the proposed low-energy seismic survey with other parties that express interest in this activity and area. NSF and ASC would coordinate with applicable U.S. agencies (e.g., NMFS), and would comply with their requirements. NSF has already prepared a permit application for the Government of South Georgia and South Sandwich Islands for the proposed research activities, including trawling and sampling of the seafloor. The proposed action would complement fieldwork studying other Antarctic ice shelves, oceanographic studies, and ongoing development of ice sheet and other ocean models. It would facilitate learning at sea and ashore by students, help to fill important spatial and temporal gaps in a lightly sampled region of coastal Antarctica, provide additional data on marine mammals present in the Scotia Sea study areas, and communicate its findings via reports, publications, and public outreach.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action (in the Scotia Sea and southern Atlantic Ocean study area). Therefore, NMFS has 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.

Analysis and Preliminary Determinations

Negligible Impact

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.) and 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, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated serious injuries and or mortalities;

(2) The number and nature of anticipated injuries;

(3) The number, nature, intensity, and duration of takes by Level B harassment (all of which are relatively limited in this case);

(4) The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(5) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(6) Impacts on habitat affecting rates of recruitment/survival; and

(7) The effectiveness of monitoring and mitigation measures.

NMFS has preliminarily determined that the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death, based on the analysis above and the following factors:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the operation of the airgun(s) to avoid acoustic harassment;

(3) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the implementation of the required monitoring and mitigation measures (including shut-down measures); and

(4) The likelihood that marine mammal detection ability by trained PSOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the NSF and ASC's planned low-energy seismic survey, and none are proposed to be authorized by NMFS. Table 6 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described in this notice (see ''Potential Effects on Marine Mammals'' section above), the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given NMFS's and the applicant's proposed mitigation, monitoring, and reporting measures to minimize impacts to marine mammals. Additionally, the seismic survey would not adversely impact marine mammal habitat.

For the marine mammal species that may occur within the proposed action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While airgun operations are anticipated to occur on consecutive days, the estimated duration of the survey would not last more than a total of 30 days. Additionally, the seismic survey would be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, so individual animals likely would only be exposed to and harassed by sound for less than a day.

As mentioned previously, NMFS estimates that 26 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 4 and 6 of this document. As shown in those tables, the proposed takes all represent small proportions of the overall populations of these marine mammal species (i.e., all are less than or equal to 5%). No injury, serious injury, or mortality is expected to occur for any of these species, and due to the nature, degree, and context of the Level B harassment anticipated, the proposed activity is not expected to impact rates of recruitment or survival for any of these marine mammal species.

Of the 26 marine mammal species under NMFS jurisdiction that may or are known to likely occur in the study area, six are listed as threatened or endangered under the ESA: Southern right, humpback, sei, fin, blue, and sperm whales. These species are also considered depleted under the MMPA. None of the other marine mammal species that may be taken are listed as depleted under the MMPA. Of the ESA-listed species, incidental take has been requested to be authorized for all six species. To protect these animals (and other marine mammals in the study area), NSF and ASC would be required to cease or reduce airgun operations if any marine mammal enters designated zones. No injury, serious injury, or mortality is expected to occur for any of these species, and due to the nature, degree, and context of the Level B harassment anticipated, and the activity is not expected to impact rates of recruitment or survival for any of these species.

NMFS's practice has been to apply the 160 dB re 1 μPa (rms) received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]). NMFS has preliminarily determined that, provided that the aforementioned mitigation and monitoring measures are implemented, the impact of conducting a low-energy marine seismic survey in the Scotia Sea and southern Atlantic Ocean, September to October 2014, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas for species to move to and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that the taking by Level B harassment from the specified activity would have a negligible impact on the affected species in the specified geographic region. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, the proposed activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given the NMFS and applicant's proposal to implement mitigation and monitoring measures would minimize impacts to marine mammals. 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 monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from NSF and ASC's proposed low-energy seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that 26 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Tables 4 and 6 of this document.

The estimated numbers of individual cetaceans and pinnipeds that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the proposed survey (including a 25% contingency) are in Table 6 of this document. Of the cetaceans, 31 southern right, 3 humpback, 616 Antarctic minke, 616 minke, 25 sei, 72 fin, 1 blue, and 8 sperm whales could be taken by Level B harassment during the proposed seismic survey, which would represent 0.39, 0.03, 3.4, unknown, 0.03, 1.54, and 0.01% of the affected worldwide or regional populations, respectively. In addition, 45 Arnoux's beaked, 3 Cuvier's beaked, 7 Gray's beaked, 37 Shepherd's beaked, 3 strap-toothed beaked, and 35 southern bottlenose whales could be taken be Level B harassment during the proposed seismic survey, which would represent unknown, unknown, unknown, unknown, unknown, and 0.07% of the affected worldwide or regional populations, respectively. Of the delphinids, 61 killer whales, 848 long-finned pilot whales, and 10 Peale's, 61 hourglass, and 24 southern right whale dolphins, and 6 spectacled porpoise could be taken by Level B harassment during the proposed seismic survey, which would represent 0.08, 0.42, unknown/5, 0.04, unknown, and unknown of the affected worldwide or regional populations, respectively. Of the pinnipeds, 73 crabeater, 46 leopard, 11 Weddell, and 1 southern elephant seals and 2,017 Antarctic and 2,017 Subantarctic fur seals could be taken by Level B harassment during the proposed seismic survey, which would represent <0.01, 0.02, <0.01, <0.01, 0.13, and 0.65 of the affected worldwide or regional population, respectively.

No known current worldwide or regional population estimates are available for 9 species under NMFS's jurisdiction that could potentially be affected by Level B harassment over the course of the IHA. These species include the minke, Arnoux's beaked, Cuvier's beaked, Gray's beaked, Shepherd's beaked, and strap-toothed beaked whales, and Peale's and southern right whale dolphins and spectacled porpoises. Minke whales occur throughout the North Pacific Ocean and North Atlantic Ocean and the dwarf sub-species occurs in the Southern Hemisphere (Jefferson *et al.,* 2008). Arnoux's beaked whales have a vast circumpolar distribution in the deep, cold waters of the Southern Hemisphere generally southerly from 34° South. Cuvier's beaked whales generally occur in deep, offshore waters of tropical to polar regions worldwide. They seem to prefer waters over and near the continental slope (Jefferson *et al.,* 2008). Gray's beaked whales are generally found in deep waters of temperate regions (south of 30° South) in the Southern Hemisphere (Jefferson *et al.,* 2008). Shepherd's beaked whales are generally found in deep temperate waters (south of 30° South) of the Southern Hemisphere and are thought to have a circumpolar distribution (Jefferson *et al.,* 2008). Strap-toothed beaked whales are generally found in deep temperate waters (between 35 to 60° South) of the Southern Hemisphere (Jefferson *et al.,* 2008). Peale's dolphins generally occur in the waters around the southern tip of South America from 33 to 38° South, but may extend to islands further south. This species is considered coastal as they are commonly found in waters over the continental shelf (Jefferson *et al.,* 2008). Southern right whale dolphins are generally found in temperate to subantarctic waters (30 to 65° South), with a southern limit bounded by the Antarctic Convergence (Jefferson *et al.,* 2008). Spectacled porpoises are generally found in subantarctic waters and may have a circumpolar distribution in the Southern Hemisphere (as far south as 64° South). They have been sighted in oceanic waters, near islands, as well as in rivers and channels (Jefferson *et al.,* 2008). Based on these distributions and preferences of these species, NMFS concludes that the requested take of these species likely represent small numbers relative to the affected species' overall population sizes.

NMFS makes its small numbers determination based on the number of marine mammals that would be taken relative to the populations of the affected species or stocks. The requested take estimates all represent small numbers relative to the affected species or stock size (i.e., all are less than or equal to 5%). Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminary finds that small numbers of marine mammals would be taken relative to the populations of the affected species or stocks. See Table 6 for the requested authorized take numbers of marine mammals.

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, six are listed as endangered under the ESA: The southern right, humpback, sei, fin, blue, and sperm whales. Under section 7 of the ESA, NSF, on behalf of ASC and two other research institutions, has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed low-energy seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will

conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, in addition to the mitigation and monitoring requirements included in the IHA, NSF and ASC will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both NSF and ASC, and NMFS's Office of Protected Resources.

National Environmental Policy Act

With NSF and ASC's complete application, NSF and ASC provided NMFS a ''Draft Initial Environmental Evaluation/Environmental Assessment to Conduct a Study of the Role of the Central Scotia Sea and North Scotia Ridge in the Onset and Development of the Antarctic Circumpolar Current,'' (IEE/EA), prepared by AECOM on behalf of NSF and ASC. The IEE/EA analyzes the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals, including those listed as threatened or endangered under the ESA. Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA or, after review and evaluation of the NSF and ASC IEE/EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the NSF and ASC IEE/EA, and decide whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to NSF and ASC for conducting the low-energy seismic survey in the Scotia Sea and southern Atlantic Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued). The proposed IHA language is provided below:

The NMFS hereby authorizes the National Science Foundation, Division of Polar Programs, 4201 Wilson Boulevard, Arlington, Virginia 22230 and Antarctic Support Contract, 7400 South Tucson Way, Centennial, Colorado 80112, under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to a low-energy marine geophysical (seismic) survey conducted by the RVIB *Nathaniel B. Palmer* (*Palmer*) in the Scotia Sea and southern Atlantic Ocean, September to October 2014:

1. This Authorization is valid from September 20 through December 1, 2014.

2. This Authorization is valid only for NSF and ASC's activities associated with low-energy seismic survey, bathymetric profile, GPS installation, and dredge sampling operations conducted aboard the *Palmer* that shall occur in the following specified geographic area:

In selected regions of the Scotia Sea (located northeast of the Antarctic Peninsula) and southern Atlantic Ocean off the coast of East Antarctica, with a focus on two areas: (1) Between the central rise of the Scotia Sea and the East Scotia Sea, and (2) the far South Atlantic Ocean immediately northeast of South Georgia toward the Northeast Georgia Rise (both encompassing the region between 53 and 58°, and between 33 and 40° West. Water depths in the survey area are expected to be deeper than 1,000 m. The low-energy seismic survey will be conducted in the Exclusive Economic Zone (EEZ) for the South Georgia and South Sandwich Islands and International Waters (i.e., high seas), as specified in NSF and ASC's Incidental Harassment Authorization application and the associated NSF and ASC Initial Environmental Evaluation/ Environmental Assessment (IEE/EA).

3. *Species Authorized and Level of Takes*

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of the Scotia Sea and southern Atlantic Ocean:

(i) *Mysticetes*—see Table 6 (above) for authorized species and take numbers.

(ii) *Odontocetes*—see Table 6 (above) for authorized species and take numbers.

(iii) *Pinnipeds*—see Table 6 (above) for authorized species and take numbers.

(iv) If any marine mammal species are encountered during seismic activities that are not listed in Table 6 (above) for authorized taking and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms) for seismic airgun operations, then the NSF and ASC must alter speed or course or shut-down the airguns to prevent take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

4. The methods authorized for taking by Level B harassment are limited to the following acoustic sources, without an amendment to this Authorization:

(a) A two Generator Injector (GI) airgun array (each with a discharge volume of 105 cubic inches [in^3]) with a total volume of 210 in^3 (or smaller);

(b) A multi-beam echosounder;

(c) A single-beam echosounder;

(d) An acoustic Doppler current profiler; and

(e) A sub-bottom profiler.

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301–427–8401.

6. *Mitigation and Monitoring Requirements*

The NSF and ASC are required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

Protected Species Observers and Visual Monitoring

(a) Utilize at least one NMFS-qualified, vessel-based Protected Species Observer (PSO) to visually watch for and monitor marine mammals near the seismic source vessel during daytime airgun operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during ramp-ups of airguns day or night. Three PSOs shall be based onboard the vessel.

(i) The *Palmer's* vessel crew shall also assist in detecting marine mammals, when practicable.

(ii) PSOs shall have access to reticle binoculars (7 × 50 Fujinon) equipped with a built-in daylight compass and range reticles.

(iii) PSO shifts shall last no longer than 4 hours at a time.

(iv) PSO(s) shall also make observations during daytime periods when the seismic airguns are not operating, when feasible, for comparison of animal abundance and behavior.

(v) PSO(s) shall conduct monitoring while the airgun array and streamer(s) are being deployed or recovered from the water.

(b) PSO(s) shall record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior

when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort sea state and wind force, visibility, and sun glare; and

(iii) The data listed under Condition 6(b)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

Buffer and Exclusion Zones

(c) Establish a 160 dB re 1 μPa (rms) buffer zone, as well as a 180 dB re 1 μPa (rms) exclusion zone for cetaceans and a 190 dB re 1 μPa (rms) exclusion zone for pinnipeds before the two GI airgun array (210 in^3 total volume) is in operation. See Table 2 (above) for distances and exclusion zones.

Visually Monitoring at the Start of the Airgun Operations

(d) Visually observe the entire extent of the exclusion zone (180 dB re 1 μPa [rms] for cetaceans and 190 dB re 1 μPa [rms] for pinnipeds; see Table 2 [above] for distances) using NMFS-qualified PSOs, for at least 30 minutes prior to starting the airgun array (day or night).

(i) If the PSO(s) sees a marine mammal within the exclusion zone, NSF and ASC must delay the seismic survey until the marine mammal(s) has left the area. If the PSO(s) sees a marine mammal that surfaces, then dives below the surface, the PSO(s) shall continue to observe the exclusion zone for 30 minutes, and if the PSO sees no marine mammals during that time, the PSO should assume that the animal has moved beyond the exclusion zone.

(ii) If for any reason the entire radius cannot be seen for the entire 30 minutes (i.e., rough seas, fog, darkness), or if marine mammals are near, approaching, or in the exclusion zone, the airguns may not be ramped-up. If one airgun is already running at a source level of at least 180 dB re 1 μPa (rms), NSF and ASC may start the second airgun without observing the entire exclusion zone for 30 minutes prior, provided no marine mammals are known to be near the exclusion zone (in accordance with Condition 6[e] below).

Ramp-Up Procedures

(e) Implement a ''ramp-up'' procedure, which means starting with a single GI airgun and adding a second GI airgun after five minutes, when starting up at the beginning of seismic operations or anytime after the entire array has been shut-down for more than 15 minutes. During ramp-up, the PSOs shall monitor the exclusion zone, and if marine mammals are sighted, a shut-down shall be implemented as though the full array (both GI airguns) were operational. Therefore, initiation of ramp-up procedures from shut-down requires that the PSOs be able to view the full exclusion zone as described in Condition 6(d) (above).

Shut-Down Procedures

(f) Shut-down the airgun(s) if a marine mammal is detected within, approaches, or enters the relevant exclusion zone (as defined in Table 2, above). A shut-down means all operating airguns are shut-down (i.e., turned off).

(g) Following a shut-down, the airgun activity shall not resume until the PSO(s) has visually observed the marine mammal exiting the exclusion zone and determined it is not likely to return, or has not seen the marine mammal within the exclusion zone for 15 minutes, for species with shorter dive durations (small odontocetes and pinnipeds), or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, killer, and beaked whales).

(h) Following a shut-down and subsequent animal departure, airgun operations may resume, following the ramp-up procedures described in Condition 6(e).

Speed or Course Alteration

(i) Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, further mitigation measures, such as a shut-down, shall be taken.

Survey Operations at Night

(j) Marine seismic surveying may continue into night and low-light hours if such segment(s) of the survey is initiated when the entire relevant exclusion zones are visible and can be effectively monitored.

(k) No initiation of airgun array operations is permitted from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the entire relevant exclusion zone cannot be effectively monitored by the PSO(s) on duty.

(l) To the maximum extent practicable, schedule seismic operations (i.e., shooting airguns) during daylight hours.

7. *Reporting Requirements*

The NSF and ASC are required to:

(a) Submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the *Palmer's* Scotia Sea and southern Atlantic Ocean cruise. This report must contain and summarize the following information:

(i) Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings;

(ii) Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (e.g., number of shut-downs), observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that: (A) Are known to have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) (for seismic airgun operations), and/or 180 dB re 1 μPa (rms) for cetaceans and 190 dB re 1 μPa (rms) for pinnipeds, with a discussion of any specific behaviors those individuals exhibited; and (B) may have been exposed (based on modeled values for the two GI airgun array) to the seismic activity at received levels greater than or equal to 160 dB re 1 μPa (rms) (for seismic airgun operations), and/or 180 dB re 1 μPa (rms) for cetaceans and 190 dB re 1 μPa (rms) for pinnipeds, with a discussion of the nature of the probable consequences of that exposure on the individuals that have been exposed.

(iv) A description of the implementation and effectiveness of the: (A) Terms and Conditions of the Biological Opinion's Incidental Take Statement (ITS) (attached); and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act-listed marine mammals.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no

comments, the draft report shall be considered to be the final report.

Reporting Prohibited Take

(c)(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (e.g., through ship-strike, gear interaction, and/or entanglement), NSF and ASC shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov.* The report must include the following information:

Time, date, and location (latitude/longitude) of the incident; the name and type of vessel involved; the vessel's speed during and leading up to the incident; description of the incident; status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with NSF and ASC to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NSF and ASC may not resume their activities until notified by NMFS via letter, email, or telephone.

Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

(ii) In the event that NSF and ASC discover an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition), NSF and ASC shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov.* The report must include the same information identified in Condition 7(c)(i) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS shall work with NSF and ASC to determine whether modifications in the activities are appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to the Activities

(iii) In the event that NSF and ASC discover an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NSF and ASC shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* within 24 hours of the discovery. NSF and ASC shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

8. *Endangered Species Act Biological Opinion and Incidental Take Statement*

NSF and ASC are required to comply with the Terms and Conditions of the ITS corresponding to NMFS's Biological Opinion issued to both NSF and ASC, and NMFS's Office of Protected Resources.

9. A copy of this Authorization and the ITS must be in the possession of all contractors and PSO(s) operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the notice of the proposed IHA for NSF and ASC's low-energy seismic survey. Please include with your comments any supporting data or literature citations to help inform our final decision on NSF and ASC's request for an MMPA authorization.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 30, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–18396 Filed 8–4–14; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 150 August 5, 2014

Part III

Department of Health and Human Services

Center for Medicare & Medicaid Services

42 CFR Part 488

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 488

[CMS–1605–F]

RIN 0938–AS07

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2015. In addition, it adopts the most recent Office of Management and Budget (OMB) statistical area delineations to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to the facility, and to determine the SNF PPS wage index including a 1-year transition with a blended wage index for all providers for FY 2015. This final rule also contains a revision to policies related to the Change of Therapy (COT) Other Medicare Required Assessment (OMRA). This final rule includes a discussion of a provision related to the Affordable Care Act involving Civil Money Penalties. Finally, this final rule discusses the SNF therapy payment research currently underway within CMS, observed trends related to therapy utilization among SNF providers, and the agency's commitment to accelerating health information exchange in SNFs.

DATES: *Effective Date:* This final rule is effective on October 1, 2014.

FOR FURTHER INFORMATION CONTACT:

Penny Gershman, (410) 786–6643, for information related to clinical issues.

John Kane, (410) 786–0557, for information related to the development of the payment rates and case-mix indexes.

Kia Sidbury, (410) 786–7816, for information related to the wage index.

Karen Tritz, (410) 786–8021, for information related to Civil Money Penalties.

Bill Ullman, (410) 786–5667, for information related to level of care determinations, consolidated billing, and general information.

SUPPLEMENTARY INFORMATION:

Availability of Certain Tables Exclusively Through the Internet on the CMS Web Site

In the past, tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas were published in the **Federal Register** as an Addendum to the annual SNF PPS rulemaking (that is, the SNF PPS proposed and final rules or, when applicable, the current update notice). However, as finalized in the FY 2014 SNF PPS final rule (78 FR 47936, 47964), beginning in FY 2015, these wage index tables are no longer published in the **Federal Register**. Instead, these tables will be available exclusively through the Internet. The wage index tables for this final rule are available exclusively through the Internet on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

Readers who experience any problems accessing any of the tables that are posted on the CMS Web site identified above should contact Kia Sidbury at (410) 786–7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

I. Executive Summary
A. Purpose
B. Summary of Major Provisions
C. Summary of Impacts
II. Background
A. Statutory Basis and Scope
B. Initial Transition
C. Required Annual Rate Updates
III. Summary of the Provisions of the FY 2015 SNF PPS Proposed Rule
IV. Analysis of and Responses to Public Comments on the FY 2015 SNF PPS Proposed Rule
A. General Comments on the FY 2015 SNF PPS Proposed Rule
B. SNF PPS Rate Setting Methodology and FY 2015 Update
1. Federal Base Rates
2. SNF Market Basket Update
a. SNF Market Basket Index
b. Use of the SNF Market Basket Percentage
c. Forecast Error Adjustment
d. Multifactor Productivity Adjustment
i. Incorporating the Multifactor Productivity Adjustment Into the Market Basket Update
e. Market Basket Update Factor for FY 2015
3. Case-Mix Adjustment
4. Wage Index Adjustment
5. Adjusted Rate Computation Example
C. Additional Aspects of the SNF PPS
1. SNF Level of Care—Administrative Presumption
2. Consolidated Billing
3. Payment for SNF-Level Swing-Bed Services
D. Other Issues
1. Changes to the SNF PPS Wage Index
a. Labor-Related Share
2. SNF Therapy Research Project
3. Revisions to Policies Related to the Change of Therapy (COT) Other Medicare Required Assessment (OMRA)
4. Civil Money Penalties (section 6111 of the Affordable Care Act)
5. Observations on Therapy Utilization Trends
6. Accelerating Health Information Exchange in the SNF PPS
7. SNF Value Based Purchasing
V. Provisions of the Final Rule; Regulations Text
VI. Collection of Information Requirements
VII. Economic Analyses
Regulations Text

Acronyms

In addition, because of the many terms to which we refer by acronym in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
ARD Assessment reference date
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554
CAH Critical access hospital
CBSA Core-based statistical area
CFR Code of Federal Regulations
CMI Case-mix index
CMS Centers for Medicare & Medicaid Services
COT Change of therapy
EHR Electronic health record
EOT End of therapy
FQHC Federally qualified health center
FR Federal Register
FY Fiscal year
GAO Government Accountability Office
HCPCS Healthcare Common Procedure Coding System
HIE Health information exchange
HOMER Home office Medicare records
ICR Information Collection Requirements
IGI IHS (Information Handling Services) Global Insight, Inc.
IPPS Inpatient Prospective Payment System
MDS Minimum data set
MFP Multifactor productivity
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173
MSA Metropolitan statistical area
NAICS North American Industrial Classification System
NF Nursing facility
OMB Office of Management and Budget
OMRA Other Medicare Required Assessment
PAMA Protecting Access to Medicare Act of 2014, Public Law 113–93
PPS Prospective Payment System
RAI Resident assessment instrument
RAVEN Resident assessment validation entry

RFA Regulatory Flexibility Act, Public Law 96–354
RHC Rural health clinic
RIA Regulatory impact analysis
RUG–III Resource Utilization Groups, Version 3
RUG–IV Resource Utilization Groups, Version 4
RUG–53 Refined 53-Group RUG–III Case-Mix Classification System
SCHIP State Children's Health Insurance Program
SNF Skilled nursing facility
STM Staff time measurement
STRIVE Staff time and resource intensity verification
UMRA Unfunded Mandates Reform Act, Public Law 104–4

I. Executive Summary

A. Purpose

This final rule updates the SNF prospective payment rates for FY 2015 as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to ''provide for publication in the **Federal Register**'' before the August 1 that precedes the start of each fiscal year, certain specified information relating to the payment update (see section II.C.).

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5) of the Act, the federal rates in this final rule reflect an update to the rates that we published in the SNF PPS final rule for FY 2014 (78 FR 47936) which reflects the SNF market basket index, adjusted by the forecast error correction, if applicable, and the multifactor productivity adjustment for FY 2015.

C. Summary of Impacts

Provision description	Total transfers
FY 2015 SNF PPS payment rate update	The overall economic impact of this final rule is an estimated increase of $750 million in aggregate payments to SNFs during FY 2015.

II. Background

A. Statutory Basis and Scope

As amended by section 4432 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33, enacted on August 5, 1997), section 1888(e) of the Act provides for the implementation of a PPS for SNFs. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services defined in section 1888(e)(2)(A) of the Act. The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998, and covers all costs of furnishing covered SNF services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital extended care services for which benefits are provided under Part A, as well as those items and services (other than a small number of excluded services, such as physician services) for which payment may otherwise be made under Part B and which are furnished to Medicare beneficiaries who are residents in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252). In addition, a detailed discussion of the legislative history of the SNF PPS is available online at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_07302013.pdf.*

As noted in section I.F. of that legislative history, on March 23, 2010, the Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted. Then, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) amended certain provisions of Public Law 111–148 and certain sections of the Social Security Act and, in certain instances, included ''freestanding'' provisions. In this final rule, Public Law 111–148 and Public Law 111–152 are collectively referred to as the ''Affordable Care Act.'' In section IV.D.4 of this final rule, we discuss one specific provision related to the Affordable Care Act involving Civil Money Penalties.

B. Initial Transition

Under sections 1888(e)(1)(A) and 1888(e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments for SNFs entirely on the adjusted federal per diem rates, we no longer include adjustment factors under the transition related to facility-specific rates for the upcoming FY.

C. Required Annual Rate Updates

Section 1888(e)(4)(E) of the Act requires the SNF PPS payment rates to be updated annually. The most recent annual update occurred in a final rule that set forth updates to the SNF PPS payment rates for FY 2014 (78 FR 47936, August 6, 2013). We subsequently published two correction notices (78 FR 61202, October 3, 2013, and 79 FR 63, January 2, 2014) with respect to that final rule, as well as a notice that made corrections to the January 2, 2014 correction notice (79 FR 1742, January 10, 2014).

Section 1888(e)(4)(H) of the Act specifies that we provide for publication annually in the **Federal Register** of the following:

- The unadjusted federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
- The case-mix classification system to be applied for these services during the upcoming FY.
- The factors to be applied in making the area wage adjustment for these services.

Along with other revisions discussed later in this preamble, this final rule provides the required annual updates to the per diem payment rates for SNFs for FY 2015.

III. Summary of the Provisions of the FY 2015 SNF PPS Proposed Rule

In the FY 2014 SNF PPS proposed rule (79 FR 25767), we proposed an update to the payment rates used under the PPS for SNFs for FY 2015. In addition, we proposed to adopt the most recent OMB statistical area delineations to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility, and to determine the SNF PPS wage index including a proposed 1-year transition with a blended wage index for all providers for FY 2015. It also included a discussion of the SNF therapy payment research currently underway within CMS. The proposed rule also proposed a revision to policies

related to the COT OMRA. The proposed rule included a discussion of a provision related to the Affordable Care Act involving Civil Money Penalties. Finally, the proposed rule included a discussion of observed trends related to therapy utilization among SNF providers and a discussion of accelerating health information exchange in SNFs.

IV. Analysis of and Responses to Public Comments on the FY 2015 SNF PPS Proposed Rule

In response to the publication of the FY 2015 SNF PPS proposed rule, we received 26 timely public comments from individuals, providers, corporations, government agencies, private citizens, trade associations, and major organizations. The following are brief summaries of each proposed provision, a summary of the public comments that we received related to that proposal, and our responses to the comments.

A. General Comments on the FY 2015 SNF PPS Proposed Rule

In addition to the comments we received on the proposed rule's discussion of specific aspects of the SNF PPS (which we address later in this final rule), commenters also submitted the following, more general observations on the payment system. A discussion of these comments, along with our responses, appears below.

Comment: We received a few comments about the operational aspects of updating the subregulatory guidance contained in the MDS RAI manual, including the frequency of updates and process for announcing revisions. These commenters stated that CMS has made major revisions to the RAI manual with little or no notice to providers and without meaningful consultation with stakeholders. These commenters further stated that CMS should utilize a more formal process for announcing revisions and reinterpretations of the RAI manual.

Response: We appreciate the commenters' suggestions and we recognize that the MDS 3.0 is a complex assessment tool. We have provided education, clarification and training associated with the MDS 3.0, as well as discussion of potential revisions and updates to the RAI manual, at national training conferences, and postings to the MDS 3.0 and SNF PPS Web site. We also provide support to and consult with stakeholders through oral and written inquiries and, most notably, through our regular and special Open Door Forums. We are committed to continuing training on the MDS 3.0 and to ensuring that the update process is predictable for providers and gives providers sufficient notice of and time to discuss, incorporate and train on any revisions to the manual which may occur. We will take the commenters' suggestions into consideration for future operational enhancements.

Comment: Several commenters raised concerns regarding the compensation for Non-Therapy Ancillaries (NTAs), specifically for hospital-based SNFs within the SNF PPS. These commenters urged CMS to expedite the research necessary to develop a new model for NTA payment and to implement such a model shortly thereafter.

Response: We appreciate the comments on this topic and the broad support for our research efforts on the development of a new NTA payment model. Furthermore, the comments we received provided a number of interesting and creative ideas for future consideration. We look forward to working with providers and stakeholders in the future as we continue to research possible refinements to address concerns with the SNF PPS, such as the SNF therapy research work discussed in section IV.D.2 of this final rule.

Comment: One commenter recommended that we address the need for CMS to broaden the categories of healthcare professionals who may order patient diets. The commenter stated that such a change will improve patient health and allows SNFs to respond more quickly to resident nutritional needs.

Response: We appreciate this comment, but note that the specific issues the commenter raised about who, within a SNF, may prescribe resident diets relate to the certification standards for long-term care facilities, and therefore, are beyond the scope of this final rule. We have, however, shared this comment with CMS's survey and certification staff so that they can consider these suggestions as part of their ongoing review and refinement of our policies.

Comment: One commenter supported CMS's proposal to include several new outcomes measures as part of the FY 2017 Hospital Value-Based Purchasing program.

Response: We appreciate this comment, but note that this comment does not relate to the SNF PPS and involves a program that does not apply to SNFs. We have, however, shared this comment with CMS staff who work more closely with the Hospital Value-Based Purchasing program to consider as part of their ongoing review and refinement of their proposed policies.

B. SNF PPS Rate Setting Methodology and FY 2015 Update

In the FY 2015 SNF PPS proposed rule (79 FR 25770 through 25779), we outlined the basic methodology used to set the rates for the SNF PPS. We also discussed a proposal associated with our rate setting methodology, specifically a proposal to adopt the most recent Office of Management and Budget (OMB) statistical area delineations to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to the facility. Our discussion of the rate setting methodology, our proposed changes associated with this methodology, and the comments, along with our responses, on these proposals appear below.

1. Federal Base Rates

Under section 1888(e)(4) of the Act, the SNF PPS uses per diem federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the federal rates also incorporated a ''Part B add-on,'' which is an estimate of the amounts that, prior to the SNF PPS, would have been payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for geographic variations in wages and for the costs of facility differences in case mix. In compiling the database used to compute the federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas, and adjusted the portion of the federal rate attributable to wage-related

costs by a wage index to reflect geographic variations in wages.

2. SNF Market Basket Update

a. SNF Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. We use the SNF market basket index, adjusted in the manner described below, to update the federal rates on an annual basis. In the SNF PPS final rule for FY 2014 (78 FR 47939 through 47946), we revised and rebased the market basket, which included updating the base year from FY 2004 to FY 2010.

For the FY 2015 final rule, the FY 2010-based SNF market basket growth rate is estimated to be 2.5 percent, which is based on the IHS Global Insight, Inc. (IGI) second quarter 2014 forecast with historical data through first quarter 2014. In section IV.B.2.e. of this final rule, we discuss the specific application of this adjustment to the forthcoming annual update of the SNF PPS payment rates.

b. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the midpoint of the previous FY to the midpoint of the current FY. For the federal rates set forth in this final rule, we use the percentage change in the SNF market basket index to compute the update factor for FY 2015. This is based on the IGI second quarter 2014 forecast (with historical data through the first quarter 2014) of the FY 2015 percentage increase in the FY 2010-based SNF market basket index for routine, ancillary, and capital-related expenses, which is used to compute the update factor in this final rule. As discussed in sections IV.B.2.c. and IV.B.2.d. of this final rule, this market basket percentage change would be reduced by the forecast error correction (as described in § 413.337(d)(2)) if applicable, and by the multifactor productivity adjustment as required by section 1888(e)(5)(B)(ii) of the Act. Finally, as discussed in section II.B. of this final rule, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial three-phase transition period from facility-specific to full federal rates that started with cost reporting periods beginning in July 1998 has expired.

c. Forecast Error Adjustment

As discussed in the June 10, 2003 supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46057 through 46059), the regulations at § 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment for market basket forecast error applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent to the FY 2004 update. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply the difference between the forecasted and actual change in the market basket when the difference exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425, August 3, 2007), we adopted a 0.5 percentage point threshold effective for FY 2008 and subsequent fiscal years. As we stated in the final rule for FY 2004 that first issued the market basket forecast error adjustment (68 FR 46058, August 4, 2003), the adjustment will ''. . . reflect both upward and downward adjustments, as appropriate.''

For FY 2013 (the most recently available FY for which there is final data), the estimated increase in the market basket index was 2.5 percentage points, while the actual increase for FY 2013 was 2.2 percentage points, resulting in the actual increase being 0.3 percentage point lower than the estimated increase. Accordingly, as the difference between the estimated and actual amount of change in the market basket index does not exceed the 0.5 percentage point threshold, the payment rates for FY 2015 do not include a forecast error adjustment. Table 1 shows the forecasted and actual market basket amounts for FY 2013.

TABLE 1—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2013

Index	Forecasted FY 2013 increase *	Actual FY 2013 increase **	FY 2013 difference
SNF	2.5	2.2	−0.3

* Published in **Federal Register**; based on second quarter 2012 IGI forecast (2004-based index).
** Based on the second quarter 2014 IHS Global Insight forecast, with historical data through the first quarter 2014 (2004-based index).

d. Multifactor Productivity Adjustment

Section 3401(b) of the Affordable Care Act requires that, in FY 2012 (and in subsequent FYs), the market basket percentage under the SNF payment system as described in section 1888(e)(5)(B)(i) of the Act is to be reduced annually by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act, added by section 3401(a) of the Affordable Care Act, sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to ''the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost-reporting period, or other annual period)'' (the MFP adjustment). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business multifactor productivity (MFP). Please see *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data.

The projection of MFP is currently produced by IGI, an economic forecasting firm. To generate a forecast of MFP, IGI replicated the MFP measure calculated by the BLS, using a series of proxy variables derived from IGI's U.S. macroeconomic models. This process is described in greater detail in section III.F.3. of the FY 2012 SNF PPS final rule (76 FR 48527 through 48529).

i. Incorporating the Multifactor Productivity Adjustment Into the Market Basket Update

According to section 1888(e)(5)(A) of the Act, the Secretary ''shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.'' Section 1888(e)(5)(B)(ii) of the Act, added by section 3401(b) of the Affordable Care Act, requires that for FY 2012 and each subsequent FY, after determining the market basket percentage described in section 1888(e)(5)(B)(i) of the Act, ''the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II)'' (which we refer to as the MFP adjustment). Section 1888(e)(5)(B)(ii) of the Act further states that the reduction of the market basket percentage by the MFP adjustment may result in the market basket percentage being less than zero for a FY, and may result in payment rates under section 1888(e) of the Act for a FY being less than such payment rates for the preceding FY. Thus, if the application of the MFP adjustment to the market basket percentage calculated under section 1888(e)(5)(B)(i) of the Act results in an MFP-adjusted market basket percentage that is less than zero, then the annual update to the unadjusted federal per diem rates under section 1888(e)(4)(E)(ii) of the Act would be negative, and such rates would decrease relative to the prior FY.

For the FY 2015 update, the MFP adjustment is calculated as the 10-year moving average of changes in MFP for the period ending September 30, 2015, which is 0.5 percent. Consistent with section 1888(e)(5)(B)(i) of the Act and § 413.337(d)(2) of the regulations, the market basket percentage for FY 2015 for the SNF PPS is based on IGI's second quarter 2014 forecast of the SNF market basket update, and is estimated to be 2.5 percent. In accordance with section 1888(e)(5)(B)(ii) of the Act (as added by section 3401(b) of the Affordable Care Act) and § 413.337(d)(3), this market basket percentage is then reduced by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2015) of 0.5 percentage point, which is calculated as described above and based on IGI's second quarter 2014 forecast. The resulting MFP-adjusted SNF market basket update is equal to 2.0 percent, or 2.5 percent less 0.5 percentage point.

e. Market Basket Update Factor for FY 2015

Sections 1888(e)(4)(E)(ii)(IV) and 1888(e)(5)(i) of the Act require that the update factor used to establish the FY 2015 unadjusted federal rates be at a level equal to the market basket index percentage change. Accordingly, we determined the total growth from the average market basket level for the period of October 1, 2013 through September 30, 2014 to the average market basket level for the period of October 1, 2014 through September 30, 2015. This process yields an update factor of 2.5 percent. As further explained in section IV.B.2.c. of this final rule, as applicable, we adjust the market basket update factor by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual percentage change in the market basket exceeds a 0.5 percentage point threshold. For FY 2013 (the most recently available FY for which there is final data), the difference between the forecasted SNF market basket percentage change and the actual SNF market basket percentage change does not exceed 0.5 percentage point, so the FY 2015 market basket of 2.5 percent would not be adjusted by the applicable difference. In addition, for FY 2015, section 1888(e)(5)(B)(ii) of the Act requires us to reduce the market basket percentage by the MFP adjustment (the 10-year moving average of changes in MFP for the period ending September 30, 2015) of 0.5 percentage point, as described in section IV.B.2.d. of this final rule. The resulting MFP-adjusted SNF market basket update is equal to 2.0 percent, or 2.5 percent less 0.5 percentage point. We used the SNF market basket, adjusted as described above, to adjust each per diem component of the federal rates forward to reflect the change in the average prices for FY 2015 from average prices for FY 2014. We would further adjust the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted federal rates for FY 2015, prior to adjustment for case-mix.

We proposed in the FY 2015 SNF PPS proposed rule (79 FR 25772) that while we would continue to compute and apply separate federal per diem rates for SNFs located in urban and rural areas as we have in the past, beginning on October 1, 2014 we would use the revised OMB statistical area delineations discussed in section IV.D.1 of this final rule to identify a facility's urban or rural status for the purpose of determining which set of rate tables would apply to a facility. As noted in that discussion, we believe that the most current OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and that use of such delineations allows us to determine more accurately the appropriate rate tables to apply under the SNF PPS. Thus, we believe it is appropriate to use the most current OMB delineations for this purpose, in order to enhance the accuracy of payments under the SNF PPS. We did not receive any comments on this proposal. Therefore, for the reasons discussed above, we are finalizing our proposal to use the revised OMB delineations discussed in section IV.D.1 of this final rule to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to a facility beginning on October 1, 2014.

TABLE 2—FY 2015 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$169.28	$127.51	$16.79	$86.39

TABLE 3—FY 2015 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$161.72	$147.02	$17.94	$87.99

3. Case-Mix Adjustment

Under section 1888(e)(4)(G)(i) of the Act, the federal rate also incorporates an adjustment to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment data and other data that the Secretary considers appropriate. In the interim final rule with comment period that initially implemented the SNF PPS (63 FR 26252, May 12, 1998), we developed the RUG–III case-mix classification system, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG–III, but also to create case-mix indexes (CMIs). The original RUG–III grouper logic was based on clinical data collected in 1990, 1995, and 1997. As discussed in the SNF PPS proposed rule for FY 2010 (74 FR 22208), we subsequently conducted a multi-year data collection and analysis under the Staff Time and Resource Intensity Verification (STRIVE) project to update the case-mix classification system for FY 2011. The resulting Resource Utilization Groups, Version 4 (RUG–IV) case-mix classification system reflected the data collected in 2006–2007 during the STRIVE project, and was finalized in the FY 2010 SNF PPS final rule (74 FR 40288) to take effect in FY 2011 concurrently with an updated new resident assessment instrument, version 3.0 of the Minimum Data Set (MDS 3.0), which collects the clinical data used for case-mix classification under RUG–IV.

We note that case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy services. The case-mix classification system uses clinical data from the MDS to assign a case-mix group to each patient that is then used to calculate a per diem payment under the SNF PPS. As discussed in section IV.C.1. of this final rule, the clinical orientation of the case-mix classification system supports the SNF PPS's use of an administrative presumption that considers a beneficiary's initial case-mix classification to assist in making certain SNF level of care determinations. Further, because the MDS is used as a basis for payment, as well as a clinical assessment, we have provided extensive training on proper coding and the time frames for MDS completion in our Resident Assessment Instrument (RAI) Manual. For an MDS to be considered valid for use in determining payment, the MDS assessment must be completed in compliance with the instructions in the RAI Manual in effect at the time the assessment is completed. For payment and quality monitoring purposes, the RAI Manual consists of both the Manual instructions and the interpretive guidance and policy clarifications posted on the appropriate MDS Web site at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html.*

In addition, we note that section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, Pub. L. 108–173) amended section 1888(e)(12) of the Act to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF residents with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special add-on for SNF residents with AIDS was to remain in effect until " . . . the Secretary certifies that there is an appropriate adjustment in the case mix . . . to compensate for the increased costs associated with [such] residents. . . ." The add-on for SNF residents with AIDS is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at *www.cms.gov/transmittals/downloads/r160cp.pdf.* In the SNF PPS final rule for FY 2010 (74 FR 40288), we did not address the certification of the add-on for SNF residents with AIDS in that final rule's implementation of the case-mix refinements for RUG–IV, thus allowing the add-on payment required by section 511 of the MMA to remain in effect. For the limited number of SNF residents that qualify for this add-on, there is a significant increase in payments. For example, using FY 2012 data, we identified fewer than 4,355 SNF residents with a diagnosis code of 042 (Human Immunodeficiency Virus (HIV) Infection). For FY 2015, an urban facility with a resident with AIDS in RUG–IV group "HC2" would have a case-mix adjusted per diem payment of $423.12 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted per diem payment of approximately $964.71.

Currently, we use the International Classification of Diseases, 9th revision, Clinical Modification (ICD–9–CM) code 042 to identify those residents for whom it is appropriate to apply the AIDS add-on established by section 511 of the MMA. In this context, we note that the Department published a final rule in the September 5, 2012 **Federal Register** (77 FR 54664) which requires us to stop using ICD–9–CM on September 30, 2014, and begin using the International Classification of Diseases, 10th revision, Clinical Modification (ICD–10–CM), on October 1, 2014. Regarding the above-referenced ICD–9–CM diagnosis code of 042, in the FY 2014 SNF PPS proposed rule (78 FR 26444, May 6, 2013), we proposed to transition to the equivalent ICD–10–CM diagnosis code of B20 upon the overall conversion to ICD–10–CM on October 1, 2014, and we subsequently finalized that proposal in the FY 2014 SNF PPS final rule (78 FR 47951 through 47952).

However, on April 1, 2014, the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) was enacted. Section 212 of PAMA, titled "Delay in Transition from ICD–9 to ICD–10 Code Sets," provides that "[t]he Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)) and section 162.1002 of title 45, Code of Federal Regulations." In light of PAMA, in the FY 2015 SNF PPS proposed rule, we stated that the effective date of the change from ICD–9–CM code 042 to ICD–10–CM code B20 for purposes of applying the AIDS add-on would be the date when ICD–10–CM becomes the required medical data code set for use on Medicare SNF claims and that, until that time, we would continue to use ICD–9–CM code 042 for this purpose. On May 1, 2014, the Department announced that, in light of section 212 of PAMA, "the U.S. Department of Health and Human Services expects to release an interim final rule in the near future that will include a new compliance date that would require the use of ICD–10 beginning October 1, 2015. The rule will also require HIPAA covered entities to continue to use ICD–9–CM through September 30, 2015." The Department has not yet published the interim final rule, however, we are proceeding in accordance with the announcement. Therefore, the effective date of the change from ICD–9–CM code 042 to ICD–10–CM code B20 for purposes of applying the AIDS add-on is October 1, 2015. Until that time, we will continue to use ICD–9–CM code 042 for this purpose.

Under section 1888(e)(4)(H), each update of the payment rates must include the case-mix classification methodology applicable for the upcoming FY. The payment rates set forth in this final rule reflect the use of the RUG–IV case-mix classification system from October 1, 2014, through September 30, 2015. We list the case-mix adjusted RUG–IV payment rates, provided separately for urban and rural SNFs, in Tables 4 and 5 with corresponding case-mix values. As discussed above, we will use the revised OMB delineations in order to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to the facility beginning on October 1, 2014. These tables do not reflect the add-on for SNF residents with AIDS enacted by section 511 of the MMA, which we apply only after making all other adjustments (such as wage index and case-mix).

TABLE 4—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	$451.98	$238.44		$86.39	$776.81
RUL	2.57	1.87	435.05	238.44		86.39	759.88
RVX	2.61	1.28	441.82	163.21		86.39	691.42
RVL	2.19	1.28	370.72	163.21		86.39	620.32
RHX	2.55	0.85	431.66	108.38		86.39	626.43
RHL	2.15	0.85	363.95	108.38		86.39	558.72
RMX	2.47	0.55	418.12	70.13		86.39	574.64
RML	2.19	0.55	370.72	70.13		86.39	527.24
RLX	2.26	0.28	382.57	35.70		86.39	504.66
RUC	1.56	1.87	264.08	238.44		86.39	588.91
RUB	1.56	1.87	264.08	238.44		86.39	588.91
RUA	0.99	1.87	167.59	238.44		86.39	492.42
RVC	1.51	1.28	255.61	163.21		86.39	505.21
RVB	1.11	1.28	187.90	163.21		86.39	437.50
RVA	1.10	1.28	186.21	163.21		86.39	435.81
RHC	1.45	0.85	245.46	108.38		86.39	440.23
RHB	1.19	0.85	201.44	108.38		86.39	396.21
RHA	0.91	0.85	154.04	108.38		86.39	348.81
RMC	1.36	0.55	230.22	70.13		86.39	386.74
RMB	1.22	0.55	206.52	70.13		86.39	363.04
RMA	0.84	0.55	142.20	70.13		86.39	298.72
RLB	1.50	0.28	253.92	35.70		86.39	376.01
RLA	0.71	0.28	120.19	35.70		86.39	242.28
ES3	3.58		606.02		$16.79	86.39	709.20
ES2	2.67		451.98		16.79	86.39	555.16
ES1	2.32		392.73		16.79	86.39	495.91
HE2	2.22		375.80		16.79	86.39	478.98
HE1	1.74		294.55		16.79	86.39	397.73
HD2	2.04		345.33		16.79	86.39	448.51
HD1	1.60		270.85		16.79	86.39	374.03
HC2	1.89		319.94		16.79	86.39	423.12
HC1	1.48		250.53		16.79	86.39	353.71
HB2	1.86		314.86		16.79	86.39	418.04
HB1	1.46		247.15		16.79	86.39	350.33
LE2	1.96		331.79		16.79	86.39	434.97
LE1	1.54		260.69		16.79	86.39	363.87
LD2	1.86		314.86		16.79	86.39	418.04
LD1	1.46		247.15		16.79	86.39	350.33
LC2	1.56		264.08		16.79	86.39	367.26
LC1	1.22		206.52		16.79	86.39	309.70
LB2	1.45		245.46		16.79	86.39	348.64
LB1	1.14		192.98		16.79	86.39	296.16
CE2	1.68		284.39		16.79	86.39	387.57
CE1	1.50		253.92		16.79	86.39	357.10
CD2	1.56		264.08		16.79	86.39	367.26
CD1	1.38		233.61		16.79	86.39	336.79
CC2	1.29		218.37		16.79	86.39	321.55
CC1	1.15		194.67		16.79	86.39	297.85
CB2	1.15		194.67		16.79	86.39	297.85
CB1	1.02		172.67		16.79	86.39	275.85
CA2	0.88		148.97		16.79	86.39	252.15
CA1	0.78		132.04		16.79	86.39	235.22
BB2	0.97		164.20		16.79	86.39	267.38
BB1	0.90		152.35		16.79	86.39	255.53
BA2	0.70		118.50		16.79	86.39	221.68
BA1	0.64		108.34		16.79	86.39	211.52
PE2	1.50		253.92		16.79	86.39	357.10
PE1	1.40		236.99		16.79	86.39	340.17
PD2	1.38		233.61		16.79	86.39	336.79
PD1	1.28		216.68		16.79	86.39	319.86
PC2	1.10		186.21		16.79	86.39	289.39

TABLE 4—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES URBAN—Continued

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
PC1	1.02		172.67		16.79	86.39	275.85
PB2	0.84		142.20		16.79	86.39	245.38
PB1	0.78		132.04		16.79	86.39	235.22
PA2	0.59		99.88		16.79	86.39	203.06
PA1	0.54		91.41		16.79	86.39	194.59

TABLE 5—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES RURAL

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	2.67	1.87	$431.79	$274.93		$87.99	$794.71
RUL	2.57	1.87	415.62	274.93		87.99	778.54
RVX	2.61	1.28	422.09	188.19		87.99	698.27
RVL	2.19	1.28	354.17	188.19		87.99	630.35
RHX	2.55	0.85	412.39	124.97		87.99	625.35
RHL	2.15	0.85	347.70	124.97		87.99	560.66
RMX	2.47	0.55	399.45	80.86		87.99	568.30
RML	2.19	0.55	354.17	80.86		87.99	523.02
RLX	2.26	0.28	365.49	41.17		87.99	494.65
RUC	1.56	1.87	252.28	274.93		87.99	615.20
RUB	1.56	1.87	252.28	274.93		87.99	615.20
RUA	0.99	1.87	160.10	274.93		87.99	523.02
RVC	1.51	1.28	244.20	188.19		87.99	520.38
RVB	1.11	1.28	179.51	188.19		87.99	455.69
RVA	1.10	1.28	177.89	188.19		87.99	454.07
RHC	1.45	0.85	234.49	124.97		87.99	447.45
RHB	1.19	0.85	192.45	124.97		87.99	405.41
RHA	0.91	0.85	147.17	124.97		87.99	360.13
RMC	1.36	0.55	219.94	80.86		87.99	388.79
RMB	1.22	0.55	197.30	80.86		87.99	366.15
RMA	0.84	0.55	135.84	80.86		87.99	304.69
RLB	1.50	0.28	242.58	41.17		87.99	371.74
RLA	0.71	0.28	114.82	41.17		87.99	243.98
ES3	3.58		578.96		17.94	87.99	684.89
ES2	2.67		431.79		17.94	87.99	537.72
ES1	2.32		375.19		17.94	87.99	481.12
HE2	2.22		359.02		17.94	87.99	464.95
HE1	1.74		281.39		17.94	87.99	387.32
HD2	2.04		329.91		17.94	87.99	435.84
HD1	1.60		258.75		17.94	87.99	364.68
HC2	1.89		305.65		17.94	87.99	411.58
HC1	1.48		239.35		17.94	87.99	345.28
HB2	1.86		300.80		17.94	87.99	406.73
HB1	1.46		236.11		17.94	87.99	342.04
LE2	1.96		316.97		17.94	87.99	422.90
LE1	1.54		249.05		17.94	87.99	354.98
LD2	1.86		300.80		17.94	87.99	406.73
LD1	1.46		236.11		17.94	87.99	342.04
LC2	1.56		252.28		17.94	87.99	358.21
LC1	1.22		197.30		17.94	87.99	303.23
LB2	1.45		234.49		17.94	87.99	340.42
LB1	1.14		184.36		17.94	87.99	290.29
CE2	1.68		271.69		17.94	87.99	377.62
CE1	1.50		242.58		17.94	87.99	348.51
CD2	1.56		252.28		17.94	87.99	358.21
CD1	1.38		223.17		17.94	87.99	329.10
CC2	1.29		208.62		17.94	87.99	314.55
CC1	1.15		185.98		17.94	87.99	291.91
CB2	1.15		185.98		17.94	87.99	291.91
CB1	1.02		164.95		17.94	87.99	270.88
CA2	0.88		142.31		17.94	87.99	248.24
CA1	0.78		126.14		17.94	87.99	232.07
BB2	0.97		156.87		17.94	87.99	262.80
BB1	0.90		145.55		17.94	87.99	251.48
BA2	0.70		113.20		17.94	87.99	219.13
BA1	0.64		103.50		17.94	87.99	209.43
PE2	1.50		242.58		17.94	87.99	348.51
PE1	1.40		226.41		17.94	87.99	332.34
PD2	1.38		223.17		17.94	87.99	329.10

TABLE 5—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES RURAL—Continued

RUG–IV category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
PD1	1.28		207.00		17.94	87.99	312.93
PC2	1.10		177.89		17.94	87.99	283.82
PC1	1.02		164.95		17.94	87.99	270.88
PB2	0.84		135.84		17.94	87.99	241.77
PB1	0.78		126.14		17.94	87.99	232.07
PA2	0.59		95.41		17.94	87.99	201.34
PA1	0.54		87.33		17.94	87.99	193.26

4. Wage Index Adjustment

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data in developing a wage index to be applied to SNFs. In the FY 2015 SNF PPS proposed rule (79 FR 25775), we proposed to continue this practice for FY 2015, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index data is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated hospital inpatient wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments. For FY 2015, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2010 and before October 1, 2011 (FY 2011 cost report data).

We note that section 315 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554, enacted on December 21, 2000) authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data.

In the FY 2015 SNF PPS proposed rule (79 FR 25775 through 25776), we also proposed to continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2015 SNF PPS wage index. For rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment, we would use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. For FY 2015, there are no rural geographic areas without hospitals for which we would apply this policy. For rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we would use the average wage indexes of all of the urban areas within the state to serve as a reasonable proxy for the wage index of that urban CBSA. For FY 2015, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA. We did not receive any comments on these proposals, and thus we will continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals, and thus, no hospital wage index data on which to base the calculation of the FY 2015 SNF PPS wage index.

A discussion of the general comments that we received on the wage index adjustment to the federal rates, and our responses to those comments, appears below. Comments on the specific proposal to use revised OMB delineations as part of the wage index are discussed in section IV.D.1. of this final rule.

Comment: Several commenters stated that hospital cost data may not be the most reliable resource when determining geographical differences in salary structure for skilled nursing facilities. These commenters also stated that, if CMS plans to continue using hospital cost data as the basis of SNF wage index adjustments, then CMS should consider adopting certain wage index policies in use under the IPPS, such as reclassification, because SNFs compete in a similar labor pool as acute care hospitals. Commenters stated that even if reclassification is not permissible, CMS should consider using the post-reclassification hospital wage data to influence SNF PPS wage index policy decisions. In addition, a few commenters recommended that CMS develop a SNF-specific wage index. Finally, a few commenters recommended that CMS attempt to smooth out the perceived volatility of annual wage index changes by implementing a floor and ceiling for annual changes to the wage index that are above or below a certain level.

Response: Consistent with our previous responses to these recurring comments (most recently published in the FY 2014 SNF PPS final rule (78 FR 47952)), developing a wage index that utilizes data specific to SNFs would require us to engage in a resource-intensive audit process. Also, we note that section 315 of BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF-specific wage index that is based on wage data from nursing homes. However, to date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data. Furthermore, we believe the collection of SNF-specific wage data would place a significant amount of additional burden on SNFs. As discussed above, we continue to believe that in the absence of SNF-specific wage data, using the pre-reclassified hospital inpatient wage data

(without the occupational mix adjustment) is appropriate and reasonable for the SNF PPS. Additionally, we believe that using post-reclassification inpatient hospital wage data to influence SNF PPS wage index policy decisions, as suggested by commenters, would not be appropriate as such reclassification data are specific to those hospitals making that request, which may or may not apply to a given SNF in a given instance.

Furthermore, we do not believe it would be appropriate to establish a floor and ceiling for annual wage index changes which are above or below a given level. Any perceived volatility in the wage index would be based upon volatility in actual wages in that area, which is something outside of CMS's control. As stated above, under section 1888(e)(4)(G)(ii) of the Act and § 413.337(a)(1)(ii) of the regulations, we adjust the SNF PPS rates to account for differences in area wage levels. We believe that applying a ceiling or floor to annual wage index changes would make the area wage index less reflective of the area wage levels. Additionally, we note that establishing an artificial ceiling for annual changes in the wage index could not only result in a wage index that does not accurately reflect the wage levels in the area, but would also have an adverse impact on those providers that would otherwise experience a larger increase in their wage index absent a ceiling.

After considering the comments received, for the reasons discussed above and in the FY 2015 SNF PPS proposed rule (79 FR 25775), we are finalizing our proposal to continue to use the updated hospital inpatient wage data, exclusive of the occupational mix adjustment, to develop the SNF PPS wage index. For FY 2015, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2010 and before October 1, 2011 (FY 2011 cost report data).

Once calculated, we apply the wage index adjustment to the labor-related portion of the federal rate, which is 69.180 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2015, using the FY 2010-based SNF market basket. Each year, we calculate a revised labor-related share, based on the relative importance of labor-related cost categories (that is, those cost categories that are sensitive to local area wage costs) in the input price index. As discussed in section IV.B.2 of this final rule, for the FY 2014 SNF PPS update, we revised the labor-related share to reflect the relative importance of the revised FY 2010-based SNF market basket cost weights for the following cost categories: Wages and salaries; employee benefits; the labor-related portion of nonmedical professional fees; administrative and facilities support services; all other: Labor-related services (previously referred to in the FY 2004-based SNF market basket as labor-intensive); and a proportion of capital-related expenses.

We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2015. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2015 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2015 in four steps. First, we compute the FY 2015 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2015 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2015 relative importance for each cost category by multiplying this ratio by the base year (FY 2010) weight. Finally, we add the FY 2015 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, the labor-related portion of non-medical professional fees, administrative and facilities support services, all other: Labor-related services, and a portion of capital-related expenses) to produce the FY 2015 labor-related relative importance. Tables 6 and 7 show the RUG–IV case-mix adjusted federal rates by labor-related and non-labor-related components. As discussed previously, the new OMB delineations will be used to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to them beginning on October 1, 2014. Table 12 in section IV.D.1.c provides the FY 2015 labor-related share components based on the SNF market basket.

TABLE 6—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–IV category	Total rate	Labor portion	Non-labor portion
RUX	776.81	$537.40	$239.41
RUL	759.88	525.68	234.20
RVX	691.42	478.32	213.10
RVL	620.32	429.14	191.18
RHX	626.43	433.36	193.07
RHL	558.72	386.52	172.20
RMX	574.64	397.54	177.10
RML	527.24	364.74	162.50
RLX	504.66	349.12	155.54
RUC	588.91	407.41	181.50
RUB	588.91	407.41	181.50
RUA	492.42	340.66	151.76
RVC	505.21	349.50	155.71
RVB	437.50	302.66	134.84
RVA	435.81	301.49	134.32
RHC	440.23	304.55	135.68
RHB	396.21	274.10	122.11
RHA	348.81	241.31	107.50
RMC	386.74	267.55	119.19
RMB	363.04	251.15	111.89
RMA	298.72	206.65	92.07
RLB	376.01	260.12	115.89

TABLE 6—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV category	Total rate	Labor portion	Non-labor portion
RLA	242.28	167.61	74.67
ES3	709.20	490.62	218.58
ES2	555.16	384.06	171.10
ES1	495.91	343.07	152.84
HE2	478.98	331.36	147.62
HE1	397.73	275.15	122.58
HD2	448.51	310.28	138.23
HD1	374.03	258.75	115.28
HC2	423.12	292.71	130.41
HC1	353.71	244.70	109.01
HB2	418.04	289.20	128.84
HB1	350.33	242.36	107.97
LE2	434.97	300.91	134.06
LE1	363.87	251.73	112.14
LD2	418.04	289.20	128.84
LD1	350.33	242.36	107.97
LC2	367.26	254.07	113.19
LC1	309.70	214.25	95.45
LB2	348.64	241.19	107.45
LB1	296.16	204.88	91.28
CE2	387.57	268.12	119.45
CE1	357.10	247.04	110.06
CD2	367.26	254.07	113.19
CD1	336.79	232.99	103.80
CC2	321.55	222.45	99.10
CC1	297.85	206.05	91.80
CB2	297.85	206.05	91.80
CB1	275.85	190.83	85.02
CA2	252.15	174.44	77.71
CA1	235.22	162.73	72.49
BB2	267.38	184.97	82.41
BB1	255.53	176.78	78.75
BA2	221.68	153.36	68.32
BA1	211.52	146.33	65.19
PE2	357.10	247.04	110.06
PE1	340.17	235.33	104.84
PD2	336.79	232.99	103.80
PD1	319.86	221.28	98.58
PC2	289.39	200.20	89.19
PC1	275.85	190.83	85.02
PB2	245.38	169.75	75.63
PB1	235.22	162.73	72.49
PA2	203.06	140.48	62.58
PA1	194.59	134.62	59.97

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–IV category	Total rate	Labor portion	Non-labor portion
RUX	794.71	$549.78	$244.93
RUL	778.54	538.59	239.95
RVX	698.27	483.06	215.21
RVL	630.35	436.08	194.27
RHX	625.35	432.62	192.73
RHL	560.66	387.86	172.80
RMX	568.30	393.15	175.15
RML	523.02	361.83	161.19
RLX	494.65	342.20	152.45
RUC	615.20	425.60	189.60
RUB	615.20	425.60	189.60
RUA	523.02	361.83	161.19
RVC	520.38	360.00	160.38
RVB	455.69	315.25	140.44
RVA	454.07	314.13	139.94
RHC	447.45	309.55	137.90
RHB	405.41	280.46	124.95
RHA	360.13	249.14	110.99
RMC	388.79	268.96	119.83

TABLE 7—RUG–IV CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–IV category	Total rate	Labor portion	Non-labor portion
RMB	366.15	253.30	112.85
RMA	304.69	210.78	93.91
RLB	371.74	257.17	114.57
RLA	243.98	168.79	75.19
ES3	684.89	473.81	211.08
ES2	537.72	371.99	165.73
ES1	481.12	332.84	148.28
HE2	464.95	321.65	143.30
HE1	387.32	267.95	119.37
HD2	435.84	301.51	134.33
HD1	364.68	252.29	112.39
HC2	411.58	284.73	126.85
HC1	345.28	238.86	106.42
HB2	406.73	281.38	125.35
HB1	342.04	236.62	105.42
LE2	422.90	292.56	130.34
LE1	354.98	245.58	109.40
LD2	406.73	281.38	125.35
LD1	342.04	236.62	105.42
LC2	358.21	247.81	110.40
LC1	303.23	209.77	93.46
LB2	340.42	235.50	104.92
LB1	290.29	200.82	89.47
CE2	377.62	261.24	116.38
CE1	348.51	241.10	107.41
CD2	358.21	247.81	110.40
CD1	329.10	227.67	101.43
CC2	314.55	217.61	96.94
CC1	291.91	201.94	89.97
CB2	291.91	201.94	89.97
CB1	270.88	187.39	83.49
CA2	248.24	171.73	76.51
CA1	232.07	160.55	71.52
BB2	262.80	181.81	80.99
BB1	251.48	173.97	77.51
BA2	219.13	151.59	67.54
BA1	209.43	144.88	64.55
PE2	348.51	241.10	107.41
PE1	332.34	229.91	102.43
PD2	329.10	227.67	101.43
PD1	312.93	216.48	96.45
PC2	283.82	196.35	87.47
PC1	270.88	187.39	83.49
PB2	241.77	167.26	74.51
PB1	232.07	160.55	71.52
PA2	201.34	139.29	62.05
PA1	193.26	133.70	59.56

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments under the SNF PPS that are greater or less than what would otherwise be made if the wage adjustment had not been made. For FY 2015 (federal rates effective October 1, 2014), we apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted federal rates by a budget neutrality factor equal to the ratio of the weighted average wage adjustment factor for FY 2014 to the weighted average wage adjustment factor for FY 2015, based on the blended wage index for FY 2015 as discussed later in this final rule. For this calculation, we use the same FY 2013 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component. The budget neutrality factor for FY 2015 is 1.0009.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), available online at *www.whitehouse.gov/omb/bulletins/b03-04.html,* which announced revised definitions for MSAs, and the creation of micropolitan statistical areas and combined statistical areas.

In adopting the CBSA geographic designations, we provided for a 1-year transition in FY 2006 with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), since the expiration of this 1-year transition on September 30,

2006, we have used the full CBSA-based wage index values.

On February 28, 2013, OMB issued OMB Bulletin No. 13–01, announcing revisions to the delineation of MSAs, Micropolitan Statistical Areas, and Combined Statistical Areas, and guidance on uses of the delineation of these areas. A copy of this bulletin is available online at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf.* This bulletin states that it ''provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data.''

While the revisions OMB published on February 28, 2013 are not as sweeping as the changes made when we adopted the CBSA geographic designations for FY 2006, the February 28, 2013 bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that become rural, rural counties that become urban, and existing CBSAs that are being split apart.

As discussed in the SNF PPS proposed rule for FY 2014 (78 FR 26448), the changes made by the bulletin and their ramifications required extensive review by CMS before using them for the SNF PPS wage index. Having completed our assessment, in the FY 2015 SNF PPS proposed rule (79 FR 25779 through 25786), we proposed changes to the SNF PPS wage index based on the newest OMB delineations, as described in OMB Bulletin No. 13–01, beginning in FY 2015, including a proposed 1-year transition with a blended wage index for FY 2015. These changes, and associated comments, are discussed further in section IV.D.1. of this final rule. The wage index applicable to FY 2015 is set forth in Table A available on the CMS Web site at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.* Table A provides a crosswalk between the FY 2015 wage index for a provider using the current OMB delineations in effect in FY 2014 and the FY 2015 wage index using the revised OMB delineations, as well as the transition wage index values that will be in effect in FY 2015.

5. Adjusted Rate Computation Example

Using the hypothetical SNF XYZ described below, Table 8 shows the adjustments made to the federal per diem rates to compute the provider's actual per diem PPS payment. We derive the Labor and Non-labor columns from Table 6. The wage index used in this example is based on the transition wage index, which may be found in Table A as referenced above. As illustrated in Table 8, SNF XYZ's total PPS payment would equal $42,299.26.

TABLE 8—ADJUSTED RATE COMPUTATION EXAMPLE SNF XYZ: LOCATED IN CEDAR RAPIDS, IA (URBAN CBSA 16300) WAGE INDEX: 0.8850

[See Transition Wage Index in Table A] [1]

RUG–IV group	Labor	Wage index	Adjusted labor	Non-labor	Adjusted rate	Percent adjustment	Medicare days	Payment
RVX	$478.32	0.885	$423.31	$213.10	$636.41	$636.41	14	$8,909.74
ES2	384.06	0.885	339.89	171.10	510.99	510.99	30	15,329.70
RHA	241.31	0.885	213.56	107.50	321.06	321.06	16	5,136.96
CC2 *	222.45	0.885	196.87	99.10	295.97	674.81	10	6,748.10
BA2	153.36	0.885	135.72	68.32	204.04	204.04	30	6,121.20
							100	$42,245.70

* Reflects a 128 percent adjustment from section 511 of the MMA.

[1] Available on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html.*

C. Additional Aspects of the SNF PPS

1. SNF Level of Care—Administrative Presumption

The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system discussed in section IV.B.3 of this final rule. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 52 RUGs of the 66-group RUG–IV case-mix classification system to assist in making certain SNF level of care determinations.

In accordance with section 1888(e)(4)(H)(ii) of the Act and the regulations at § 413.345, we include in each update of the federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. As set forth in the FY 2010 SNF PPS final rule (74 FR 40341), this designation reflects an administrative presumption under the 66-group RUG–IV system that beneficiaries who are correctly assigned to one of the upper 52 RUG–IV groups on the initial five-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the five-day Medicare-required assessment.

A beneficiary assigned to any of the lower 14 RUG–IV groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 52 RUG–IV groups during the immediate post-hospital period require a covered level of care, which would be less likely for those beneficiaries assigned to one of the lower 14 RUG–IV groups.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure. In this final rule, we would continue to designate the upper 52 RUG–IV groups for purposes of this administrative presumption, consisting of all groups encompassed by the following RUG–IV categories:

- Rehabilitation plus Extensive Services;
- Ultra High Rehabilitation;

- Very High Rehabilitation;
- High Rehabilitation;
- Medium Rehabilitation;
- Low Rehabilitation;
- Extensive Services;
- Special Care High;
- Special Care Low; and,
- Clinically Complex.

However, we note that this administrative presumption policy does not supersede the SNF's responsibility to ensure that its decisions relating to level of care are appropriate and timely, including a review to confirm that the services prompting the beneficiary's assignment to one of the upper 52 RUG–IV groups (which, in turn, serves to trigger the administrative presumption) are themselves medically necessary. As we explained in the FY 2000 SNF PPS final rule (64 FR 41667), the administrative presumption:

> . . . is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations in which a resident's assignment to one of the upper . . . groups is itself based on the receipt of services that are subsequently determined to be not reasonable and necessary.

Moreover, we want to stress the importance of careful monitoring for changes in each patient's condition to determine the continuing need for Part A SNF benefits after the assessment reference date of the 5-day assessment.

2. Consolidated Billing

Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (as added by section 4432(b) of the BBA) require a SNF to submit consolidated Medicare bills to its Medicare Administrative Contractor for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, section 1862(a)(18) places the responsibility with the SNF for billing Medicare for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. Section 1888(e)(2)(A) of the Act excludes a small list of services from the consolidated billing provision (primarily those services furnished by physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).

A detailed discussion of the legislative history of the consolidated billing provision is available on the SNF PPS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Downloads/Legislative_History_07302013.pdf.* In particular, section 103 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113, enacted on November 29, 1999) amended section 1888(e)(2)(A) of the Act by further excluding a number of individual ''high-cost, low probability'' services, identified by Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the SNF PPS proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *www.cms.gov/transmittals/downloads/ab001860.pdf.*

As explained in the FY 2001 proposed rule (65 FR 19232), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary ''. . . the authority to designate additional, individual services for exclusion within each of the specified service categories.'' In the proposed rule for FY 2001, we also noted that the BBRA Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as ''. . . high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system. . . .'' According to the conferees, section 103(a) of the BBRA ''is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs. . . .'' By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those four categories (thus, leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule for FY 2001 (65 FR 46790), and as our longstanding policy, any additional service codes that we might designate for exclusion under our discretionary authority must meet the same statutory criteria used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: They must fall within one of the four service categories specified in the BBRA; and they also must meet the same standards of high cost and low probability in the SNF setting, as discussed in the BBRA Conference report. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion ''. . . as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)'' (65 FR 46791), and since that time, we have periodically invited the public to submit comments identifying codes that might meet the criteria for exclusion. In the FY 2015 SNF PPS proposed rule (79 FR 25779), we specifically invited public comments identifying HCPCS codes in any of these four service categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing, and we requested commenters to identify in their comments the specific HCPCS code that is associated with the service in question, as well as their rationale for requesting that the identified HCPCS code(s) be excluded. A discussion of the public comments received on this topic, along with our responses, appears below.

Comment: One commenter recommended four particular chemotherapy drugs for exclusion. As described by Healthcare Common Procedure Coding System (HCPCS) code J8562, the first drug (fludarabine phosphate, 10 mg) is administered orally, but this same drug is already excluded under code J9185 when administered in a 50 mg dosage via intravenous injection. The commenter incorrectly characterized the second recommended drug, Revlimid (lenalidomide), as being assigned to code J3590 (whose descriptor is actually ''unclassified biologic''); in fact, that drug, along with the commenter's third recommended drug, Zytiga (Abiraterone acetate), is not assigned a specific code

of its own, but instead comes under the heading of one of the broader, ''not otherwise specified'' (NOS) codes, J8999 (''Prescription drug, oral, chemotherapeutic, NOS''). The fourth chemotherapy drug that the commenter recommended for exclusion was code J9219 (Leuprolide acetate implant, 65 mg).

Response: Regarding the first drug that the commenter cited (code J8562), the only oral fludarabine product is Oforta®, which was withdrawn from the market in September 2011. In addition, Oforta® is marked as discontinued on the drugs@FDA Web site (see *http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm?fuseaction=Search.Set_Current_Drug&ApplNo=022273&DrugName=OFORTA&ActiveIngred=FLUDARABINE%20PHOSPHATE&SponsorApplicant=SANOFI%20AVENTIS%20US&ProductMktStatus=3&goto=Search.DrugDetails*), and there are no generics listed for the oral form.

Regarding the comment involving two chemotherapy drugs that have not been assigned their own specific HCPCS codes, we note that the assignment of such a code has been an essential element of identifying certain chemotherapy drugs for exclusion ever since the BBRA first created the statutory exclusion list in 1999, as reflected in the drafting of the statutory provision itself as well as in our periodic solicitation of ''codes'' that might meet the criteria for exclusion. When the Congress previously enacted the original consolidated billing legislation in section 4432(b) of the BBA, chemotherapy drugs did not appear in the initial set of exclusions from this provision. Accordingly, all chemotherapy drugs were originally subject to consolidated billing, and none were separately billable under Part B when furnished to an SNF's Part A resident. Then, in section 103 of the BBRA, the Congress excluded certain items and services involving chemotherapy and its administration from the SNF consolidated billing requirement, effective with items and services furnished on or after April 1, 2000. However, this legislation did not categorically exclude all chemotherapy drugs from SNF consolidated billing; rather, as explained in the BBRA's Conference Report, it specifically targeted those ''high-cost, low probability'' drugs that ''. . . are not typically administered in a SNF, or are exceptionally expensive, or are given as infusions, thus requiring special staff expertise to administer'' (H.R. Conf. Rep. No. 106–479 at 854). By contrast, other types of chemotherapy drugs that ''. . . are relatively inexpensive and are administered routinely in SNFs'' were to remain subject to SNF consolidated billing. The approach that the Congress adopted to identify the individual chemotherapy drugs being designated for exclusion consisted of listing them by HCPCS code in the statute itself. Thus, a chemotherapy drug's assignment to its own specific code has always served as the mechanism of designating that drug for exclusion, as well as the means by which the claims processing system is able to recognize that exclusion. This means that an NOS code such as J8999, which is broadly comprised of miscellaneous chemotherapy drugs ''not otherwise specified'' in the coding system, would be unsuitable for this function, as such a code would not allow for distinguishing the particular chemotherapy drug that is intended for exclusion from the various other, non-excluded chemotherapy drugs also encompassed by that same code.

Regarding code J9219 (Leuprolide acetate implant, 65 mg), we have noted previously in the FY 2008 SNF PPS final rule (72 FR 43431, August 3, 2007) that this drug

> . . . is a hormonal agent which is clinically analogous to other existing codes that have not been designated for exclusion; moreover, as this drug is used in treating the commonly-occurring condition of prostate cancer, we believe that it is unlikely to meet the criterion of ''low probability'' specified in the BBRA.

Comment: One commenter reiterated recommendations that commenters had repeatedly urged us to adopt in previous years, by expanding the existing chemotherapy exclusion to encompass related drugs that are commonly administered in conjunction with chemotherapy to ameliorate the side effects of the chemotherapy drugs, and by excluding certain additional categories of services beyond those specified in the BBRA, such as the antibiotic drug, Vancomycin. Another commenter cited previously-expressed objections from numerous prior public comment periods regarding the limited scope of the existing administrative exclusion for certain specified types of high-intensity outpatient services (which applies only when such services are furnished in the outpatient hospital setting and not when furnished in other, freestanding settings), and stated that this exclusion should focus on the nature of the excluded service itself rather than on the location in which the service is furnished.

Response: Regarding the exclusion of chemotherapy-related drugs, we have noted repeatedly in this and previous final rules—such as the FY 2014 SNF PPS final rule (78 FR 47958–59, August 6, 2013)—that the BBRA authorizes us to identify additional service codes for exclusion only within those particular service categories (chemotherapy items; chemotherapy administration services; radioisotope services; and, customized prosthetic devices) that it has designated for this purpose, and does not give us the authority to exclude additional services which, though they may be related to one of the categories designated for exclusion, fall outside of the specified service categories themselves. Thus, while such drugs as anti-emetics (anti-nausea drugs) and drugs that stimulate the body's production of blood cells to replace those destroyed by chemotherapy are commonly administered in conjunction with chemotherapy, they are not inherently chemotherapeutic in nature (that is, they do not actively destroy cancer cells) and, consequently, do not fall within the excluded chemotherapy category designated in the BBRA. Regarding the exclusion of the antibiotic drug Vancomycin, we noted in the FY 2012 SNF PPS final rule that ''. . . we decline to add to the exclusion list those services submitted by commenters that have already been considered and not excluded in previous years based on their being outside the particular service categories that the statute authorizes for exclusion'' (76 FR 48531, August 8, 2011). Such services would include antibiotics, as discussed previously in the FY 2004 SNF PPS final rule (68 FR 46060, August 4, 2003). The statute does not provide the Secretary the authority to create additional categories of excluded services beyond those specified in the law. Finally, we note that the administrative exclusion for certain designated types of outpatient services does indeed consider the exceptionally intensive nature of the excluded services themselves, and in fact, as we have explained on numerous occasions (including, most recently, in the FY 2014 SNF PPS final rule (78 FR 47957–58, August 6, 2013)), this is precisely the reason for limiting this exclusion to the outpatient hospital setting:

> . . . as we initially noted in the FY 2009 SNF PPS final rule (73 FR 46436, August 8, 2008) and then reiterated in a number of subsequent final rules, the repeated calls to expand the administrative exclusion for high-intensity outpatient services in this manner would appear to reflect . . . a continued misunderstanding of the underlying purpose of this provision. As we have consistently noted in response to comments on this issue in previous years . . . and as also explained in MLN Matters article SE0432 . . . the

rationale for establishing this exclusion was to address those types of services that are so far beyond the normal scope of SNF care that they require the intensity of the hospital setting in order to be furnished safely and effectively.

Moreover, we note that when the Congress enacted the consolidated billing exclusion for certain RHC and FQHC services in section 410 of the MMA, the accompanying legislative history's description of present law acknowledged that the existing exclusions for exceptionally intensive outpatient services are specifically limited to '. . . certain outpatient services *from a Medicare-participating hospital or critical access hospital* . . .' (emphasis added). (See the House Ways and Means Committee Report (H. Rep. No. 108–178, Part 2 at 209), and the Conference Report (H. Conf. Rep. No. 108–391 at 641)). Therefore, these services are excluded from SNF consolidated billing only when furnished in the outpatient hospital or CAH setting, and not when furnished in other, freestanding (non-hospital or non-CAH) settings.

Comment: One commenter reiterated the recurring objections to excluding certain high-intensity outpatient services only when furnished in the hospital setting, specifically in the context of radiation therapy. However, in addition to restating the same positions on this point that had already been advanced and addressed repeatedly in prior rules—most recently, in the FY 2014 SNF PPS final rule (78 FR 47957–58, August 6, 2013)—the commenter also presented a new line of reasoning, stating that radiation therapy is, in fact, already encompassed by the existing exclusion for radioisotope services at section 1888(e)(2)(A)(iii)(IV) of the Act (which, as a statutory exclusion, is not restricted to only those services furnished in the outpatient hospital setting). The commenter explained that, of the three types of radiation treatment, two can involve the use of radioisotopes: Systemic radioisotopes administered through infusion or oral ingestion (which are already addressed in the 79000-series codes currently set forth in the statutory exclusion) and brachytherapy (sealed source radiation placed precisely in the area under treatment, as identified in a number of 77000-series codes). (The commenter noted in passing that the third type, external beam radiation therapy, at one time also utilized a radioisotope (Cobalt 60) as well, but added that this particular application is now ''very rarely used,'' as it ''. . . poses increased radiation risk, decreased accuracy, and unfavorable treatment beam characteristics''). In addition to the relatively narrow range of 79000-series codes that the statute currently excludes as radioisotope services, the commenter recommended excluding a substantially broader range of radiation oncology codes (primarily in the 77000 series), including a number of supplemental clinical treatment and planning codes that can be furnished not only in connection with a radioisotope procedure, but also more generally with various other forms of radiation treatment as well. In this context, the commenter cited our own characterization of the BBRA legislation as conferring on the Secretary ''. . . the authority to designate additional, individual services for exclusion within each of the *specified service categories*'' (emphasis added), and stated that the particular ''specified service category'' at issue here is actually the Part B benefit category at section 1861(s)(4) of the Act, which encompasses ''X-ray, radium, and radioactive isotope therapy, including materials and services of technicians.'' As a consequence, the commenter asserted that the existing statutory exclusion of ''radioisotope services'' should be considered to encompass every type of radiation treatment described in section 1861(s)(4) of the Act, even in those instances where no actual use of radioisotopes is involved.

Response: We note that two of the specific codes (79300 and 79403) that the commenter recommended adding to the list of excluded radioisotope services already appear as such in Major Category III.C (''Radioisotopes and their Administration'') of the online exclusion list, which is available in the 2014 Part A MAC Update at *http://www.cms.gov/Medicare/Billing/SNFConsolidatedBilling/2014-Part-A-MAC-Update.html*. Beyond that, we agree that the statutory exclusion of radioisotope services at section 1888(e)(2)(A)(iii)(IV) of the Act is not confined to the fairly narrow range of 79000-series codes specified in the law itself (identifying systemic radioisotopes administered through infusion or oral ingestion), but rather, is intended to encompass all of the ''high-cost, low probability'' forms of radiation treatment that actually involve the use of radioisotope services (which can include brachytherapy as well). Accordingly, we will make appropriate revisions in Major Category III.C to reflect this, by adding the brachytherapy-related code 77014 (computed tomography guidance for placement of radiation therapy fields for brachytherapy), as well as the clinical brachytherapy code range of 77750 to 77799. However, we are not adding external beam radiation therapy to this category of the exclusion list (even when it involves the use of the radioisotope Cobalt 60) in view of the commenter's characterization of this particular radioisotope application in terms that would raise questions about whether it continues to be used as well as inherent questions about its safety and efficacy in this context. In our discussion of the statutory exclusion for chemotherapy services in the FY 2014 SNF PPS final rule, we noted that ''. . . when an otherwise excluded chemotherapy drug is prescribed for a use that does not involve treating cancer, the drug would not qualify as an excluded 'chemotherapy' drug in that instance'' (78 FR 47958). Similarly, we note that to the extent any of the additional brachytherapy codes we now specify for exclusion as ''radioisotope services'' under section 1888(e)(2)(A)(iii)(IV) of the Act could serve to identify non-radioisotope, as well as radioisotope procedures, the radioisotope exclusion under Major Category III.C would apply only in those particular instances that actually involve the use of radioisotopes. (Of course, even when associated with a non-radioisotope procedure, a particular code that also appears in Major Category I.D (''Radiation Therapy'') of the online exclusion list could still qualify for exclusion on that basis when furnished in the outpatient hospital setting.)

We are also not adopting the commenter's recommendation to exclude a number of supplemental but more generic clinical treatment and planning codes beyond those that specifically identify the actual performance of the radioisotope procedure itself. We decline to exclude such codes, not because these supplemental activities would never occur in connection with a radioisotope procedure (as this is indeed possible in certain instances), but rather, because they are unlikely in themselves to meet the ''high-cost, low probability'' threshold which determines those specific radioisotope services that qualify for exclusion under this provision. We believe that for treatments involving the use of radioisotope services, it is the actual performance of the radioisotope procedure itself (rather than any associated preparatory and planning activities) that would account for the preponderance of the cost, so that those separate, supplemental codes would be unlikely in themselves to meet the ''high-cost'' threshold for exclusion.

Similarly, we do not believe that these supplemental codes would meet the ''low probability'' criterion, as they are associated not just with radioisotope procedures alone, but also more generally with various other, more commonly used forms of radiation treatment.

Moreover, we do not share the commenter's view that the ''specified service category'' at issue here is the Part B benefit category at section 1861(s)(4) of the Act, which provides for broader coverage of radiation treatment beyond just that involving the use of radioisotope services. We note that the statutory exclusion for ''radioisotope services'' at section 1888(e)(2)(A)(iii)(IV) of the Act stands in marked contrast, for example, to the ones for dialysis and erythropoietin (EPO) at section 1888(e)(2)(A)(ii) of the Act, which consist of—and, in fact, are defined by—explicit cross-references to the corresponding Part B benefit categories appearing in sections 1861(s)(2)(F) and 1861(s)(2)(O) of the Act, respectively. Conversely, the statutory exclusion at section 1888(e)(2)(A)(iii)(IV) of the Act does not contain such a cross-reference to the Part B benefit category at section 1861(s)(4) of the Act for general coverage of radiation treatments, and thus, applies specifically to ''radioisotope services'' alone.

3. Payment for SNF-Level Swing-Bed Services

Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute- or SNF-level care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF-level services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. As explained in the FY 2002 final rule (66 FR 39562), this effective date is consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have now come under the SNF PPS. Therefore, all rates and wage indexes outlined in this final rule for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS, and the transmission software (RAVEN–SB for Swing Beds) appears in the FY 2002 final rule (66 FR 39562) and in the FY 2010 final rule (74 FR 40288). As finalized in the FY 2010 SNF PPS final rule (74 FR 40356 through 40357), effective October 1, 2010, non-CAH swing-bed rural hospitals are required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/index.html*. We received no comments on this aspect of the proposed rule.

D. Other Issues

1. Proposed Changes to the SNF PPS Wage Index

a. Background

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the federal rates to account for differences in area wage levels, using a wage index that the Secretary determines appropriate. Since the inception of the SNF PPS, we have used hospital inpatient wage data, exclusive of the occupational mix adjustment, in developing a wage index to be applied to SNFs. As noted previously in section IV.B.4. of this final rule, we will continue that practice for FY 2015. The wage index used for the SNF PPS is calculated using the Inpatient Prospective Payment System (IPPS) wage index data on the basis of the labor market area in which the acute care hospital is located, but without taking into account geographic reclassifications under section 1886(d)(8) and (d)(10) of the Act, and without applying the IPPS rural floor under section 4410 of the BBA, the IPPS imputed rural floor under 42 CFR 412.64(h), the frontier state floor under section 1886(d)(3)(E)(iii) of the Act, and the outmigration adjustment under section 1886(d)(13) (see the FY 2006 SNF PPS proposed rule (70 FR 29090 through 29095)). The applicable SNF wage index value is assigned to a SNF on the basis of the labor market area in which the SNF is geographically located. Under section 1888(e)(4)(G)(ii) of the Act, beginning with FY 2006, we delineate labor market areas based on the Core-Based Statistical Areas (CBSAs) established by the Office of Management and Budget (OMB). The current statistical areas used in FY 2014 are based on OMB standards published on December 27, 2000 (65 FR 82228) and Census 2000 data and Census Bureau population estimates for 2007 and 2008 (OMB Bulletin No. 10–02). For a discussion of OMB's delineations of CBSAs and our implementation of the CBSA definitions, we refer readers to the preambles of the FY 2006 SNF PPS proposed rule (70 FR 29090 through 29096) and final rule (70 FR 45040 through 45041). As stated in the FY 2014 SNF PPS proposed rule (78 FR 26448) and final rule (78 FR 47952), on February 28, 2013, OMB issued OMB Bulletin No. 13–01, which established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b-13-01.pdf*. According to OMB, ''[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** (75 FR 37246–37252) and Census Bureau data.''

While the revisions OMB published on February 28, 2013 are not as sweeping as the changes made when we adopted the CBSA geographic designations for FY 2006, the February 28, 2013 OMB bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. However, because the bulletin was not issued until February 28, 2013, with supporting data not available until later, and because the changes made by the bulletin and their ramifications needed to be extensively reviewed and verified, we were unable to undertake such a lengthy process before publication of the FY 2014 SNF PPS proposed rule and, thus, did not implement changes to the wage index for FY 2014 based on these new OMB delineations. In the FY 2014 SNF PPS final rule (78 FR 47952), we stated that we intended to propose changes to the wage index based on the most current OMB delineations in the FY 2015 SNF PPS proposed rule. As discussed in the FY 2015 SNF PPS proposed rule (79 FR 25779 through 25786), we proposed to implement the new OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, for the SNF PPS wage index beginning in FY 2015, because we believe it is important for the SNF PPS to use the latest OMB delineations available in order to

maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. While CMS and other stakeholders have explored potential alternatives to the current CBSA-based labor market system (we refer readers to the CMS Web site at *www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/Wage-Index-Reform.html*), no consensus has been achieved regarding how best to implement a replacement system. As discussed in the FY 2005 IPPS final rule (69 FR 49027), ''While we recognize that MSAs are not designed specifically to define labor market areas, we believe they do represent a useful proxy for this purpose.'' We further believe that using the most current OMB delineations would increase the integrity of the SNF PPS wage index by creating a more accurate representation of geographic variation in wage levels. As noted in the FY 2015 SNF PPS proposed rule, we have reviewed our findings and impacts relating to the new OMB delineations, and have concluded that there is no compelling reason to further delay implementation (79 FR 25780). Because we believe that we have broad authority under section 1888(e)(4)(G)(ii) to determine the labor market areas used for the SNF PPS wage index, and because we also believe that the most current OMB delineations accurately reflect the local economies and wage levels of the areas in which hospitals are currently located, we proposed to implement the new OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, for the SNF PPS wage index beginning in FY 2015. Further, we proposed a transition period of 1 year, during which a 50/50 blended wage index would be used for all providers in FY 2015, in order to mitigate the resulting short-term instability and negative impacts on certain providers and to provide time for providers to adjust to their new labor market delineations. Under this proposal, providers would receive 50 percent of their FY 2015 wage index based on the new OMB delineations and 50 percent of their FY 2015 wage index based on the labor market delineations for FY 2014 (both using FY 2011 hospital wage data). In addition, we proposed to continue to treat Micropolitan Statistical Areas (referred to here as Micropolitan Areas) as rural and to include such areas in the calculation of the state's rural wage index. As we explained in the FY 2015 SNF PPS proposed rule (79 FR 25780), because Micropolitan Areas tend to encompass smaller population centers and contain fewer hospitals than MSAs, if Micropolitan Areas were to be treated as separate labor market areas, the SNF PPS wage index would include significantly more single-provider labor market areas. We further explained that recognizing Micropolitan Areas as independent labor markets would generally increase the potential for dramatic shifts in year-to-year wage index values because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of an area. Dramatic shifts in an area's wage index from year to year are problematic and create instability in the payment levels from year to year, which could make fiscal planning for SNFs difficult if we adopted this approach. For a full discussion of our proposals and associated rationale related to the implementation of the new OMB delineations, we refer readers to the FY 2015 SNF PPS proposed rule (79 FR 25779 through 25786). The comments we received on the proposed changes to the wage index, including those comments on our proposed transition methodology, as well as responses to these comments, appear below.

Comment: We received a few comments on the proposed implementation of the new OMB delineations for the SNF PPS wage index, primarily focused on how such changes would be implemented. Specifically, one commenter requested a 2-year phase-in (rather than our proposed 1-year transition) for the proposed wage index changes. Other commenters stated that CMS should utilize similar implementation policies for the SNF wage index changes as were proposed for hospital providers in the FY 2015 Inpatient Prospective Payment System (IPPS) proposed rule (79 FR 27978). More specifically, these commenters urged CMS to establish a three-year transition policy (similar to that proposed under IPPS) for urban SNFs that would become rural under the new OMB delineations.

Response: As noted in the FY 2015 SNF PPS proposed rule (79 FR 25785), we considered proposing a multi-year transition approach, whether it be 2, 3, or some other number of years, in order minimize the impact of the proposed wage index changes in a given year. However, we also believe this must be balanced against the need to ensure the most accurate payments possible based on the most current geographic delineations, which supports the use of a shorter transition to the revised OMB delineations. As discussed in the FY 2015 SNF PPS proposed rule (79 FR 25785), we believe that using the most current OMB delineations would increase the integrity of the SNF PPS wage index by creating a more accurate representation of geographic variation in wage levels. As such, we believe that utilizing a 1-year (rather than a multiple-year) transition with a blended wage index in FY 2015 would strike the best balance.

It should also be noted that the implementation of the revised OMB delineations, which we are finalizing in this rule, sets SNF payments at a level that more accurately reflects the costs of labor in a SNF's geographic area. Accordingly, under this policy, SNFs will experience a decrease from their current wage index value only to the extent that their current wage index value actually exceeds what the latest area wage data warrants using the revised OMB delineations, and they will experience an increase from their current wage index value to the extent that their current wage index value is less than what the latest area wage data warrants using the revised OMB delineations. We believe that pursuing a longer transition period would advantage the former group by delaying implementation of the full decrease in their wage index values under the new OMB delineations, at the further expense of the latter group which would experience an extended delay in implementation of the full increase in their wage index values. We believe that utilizing a 1-year (rather than a multiple-year) transition with a blended wage index in FY 2015 strikes an appropriate balance between the interests of these two groups of providers.

Commenters also suggested that CMS consider a 3-year transition methodology similar to that proposed in the FY 2015 IPPS proposed rule. In the FY 2015 IPPS proposed rule, CMS proposed a 3-year transition for those hospitals that are currently in urban areas that would become rural under the new OMB delineations, under which such hospitals would receive the urban wage index of the CBSA in which they are currently located for FY 2014 for a period of three fiscal years (see the FY 2015 IPPS proposed rule, 79 FR 28060). However, there are important differences between the IPPS and SNF PPS which give rise to different implementation and impact considerations. Most notably, IPPS hospital providers are subject to the rural floor, which requires that the wage index applicable to any hospital located in an urban area of a state not be less than the rural wage index of the state (see the FY 2015 IPPS proposed rule, 79 FR 28068). This guarantees that the wage index for rural hospitals is not

greater than the wage index of any urban hospitals in the same state. As a result, hospitals moving from urban to rural status under the new OMB delineations are more likely to experience a decrease in their wage index, while hospitals moving from rural to urban status under the new OMB delineations are more likely to experience an increase in their wage index. This is not the case in the SNF PPS, where the rural floor is not applied and such differential impacts on urban and rural providers do not exist. Under the SNF PPS, the subsets of providers that will experience increases and decreases in wage index due to implementation of the new OMB delineations are quite varied. For example, 22 SNFs changing from urban to rural status under the new OMB delineations will have a higher wage index than they had in their urban CBSA. This would be less likely to occur if the rural floor were applied under the SNF PPS. Given the impacts discussed above, we believe that the 3-year transition policy proposed in the FY 2015 IPPS proposed rule and discussed above is not necessary or appropriate to address the impacts on SNF providers. By contrast, under the IPPS, hospitals currently located in urban areas that would become rural under the revised OMB delineations are more likely to experience a wage index decrease as discussed above, raising concerns over the potential adverse impact of the new OMB delineations on those hospitals that are specific to the IPPS. Therefore, we do not agree with the commenter that a 3-year transition policy, similar to that proposed under the IPPS, should be applied to those SNFs changing from urban to rural status under the new OMB delineations.

To further address commenters' general suggestion that we utilize similar implementation policies as were proposed for hospital providers in the FY 2015 IPPS proposed rule, we also considered whether it would appropriate to apply a variation of the 3-year transition discussed above, pursuant to which SNFs that would experience a decrease in their wage index under the new OMB delineations would receive the wage index of the CBSA in which they are currently located for FY 2014 for a period of three fiscal years. This would involve applying a different transition policy for this subset of SNFs (allowing them to maintain the wage index of the CBSA in which they are currently located for three fiscal years) than would be applied to other SNFs. However, because revisions in the SNF PPS wage index must be made in a budget neutral manner, as required by section 1888(e)(4)(G)(ii) of the Act, if such a 3-year transition policy were to be applied to this subset of providers, the resulting budget neutrality adjustment would reduce the base payment rates for all SNFs in FY 2015, as well as potentially reduce base rates for each of the two additional years during which this transition policy would be in effect. In terms of the overall impact on SNFs, pursuing this type of transition policy would, in effect, aid the 21 percent of SNFs experiencing a decrease in their wage index due to the new OMB delineations (who would nevertheless also experience a decrease in their base rates under this alternative) at the expense the remaining 79 percent of SNFs, all of which would experience a decrease in their base rates due to the budget neutrality adjustment (including those SNFs experiencing either no change or an increase in their wage index under the new OMB delineations). As we stated in the FY 2015 SNF PPS proposed rule (79 FR 25785), we looked for a transition approach that would provide relief to the largest percentage of adversely affected SNFs with the least impact to the rest of facilities. As discussed in the FY 2015 SNF PPS proposed rule (79 FR 25785–25786), we believe that the application of a one-year transition blended wage index for all providers best achieves this goal, as it mitigates the negative payment impacts of the new OMB delineations for adversely affected SNFs, without reducing the base rates for all providers. Furthermore, as discussed above, we do not believe a multi-year transition approach would be appropriate, given the need to ensure the most accurate payments possible based on the most current geographic delineations.

While we understand the concern raised by these commenters regarding the potential impact on the subset of SNFs that would experience a decrease in their wage index, we believe this must be weighed against the interests of and impact on all SNFs. As discussed above, and in the SNF PPS proposed rule (79 FR 25785), we believe that our proposed 1-year transition policy with a 50/50 blended wage index for all SNFs appropriately mitigates the negative payment impacts on SNFs that will experience a wage index decrease due to implementation of the new OMB delineations, while having the least impact on the rest of the facilities.

Accordingly, for the reasons specified in this final rule and in the FY 2015 SNF PPS proposed rule (79 FR 25779 through 25786), we are finalizing, without modification, our proposal to implement the new OMB delineations as described in the February 28, 2013 OMB Bulletin No. 13–01, for the SNF PPS wage index beginning in FY 2015. Under this policy, as proposed, we will continue to treat Micropolitan Areas as rural and to include such areas in the calculation of the state's rural wage index. Further, as proposed in the FY 2015 SNF PPS proposed rule, we are finalizing a transition period of 1 year, during which a 50/50 blended wage index will be used for all providers in FY 2015. In FY 2015, SNFs will receive 50 percent of their FY 2015 wage index based on the new OMB delineations and 50 percent of their FY 2015 wage index based on the OMB delineations in effect for FY 2014 (both using FY 2011 hospital wage data). Beginning October 1, 2015, the wage index for all SNFs will be fully based on the new OMB delineations.

The wage index applicable to FY 2015 is set forth in Table A available on the CMS Web site at *http://cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/WageIndex.html*. Table A provides a crosswalk between the FY 2015 wage index for a provider using the current OMB delineations in effect in FY 2014 and the FY 2015 wage index using the revised OMB delineations, as well as the transition wage index values that will be in effect in FY 2015.

a. Labor-Related Share

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the SNF market basket as discussed in section IV.B.4 of this final rule. Table 12 summarizes the updated labor-related share for FY 2015, compared to the labor-related share that was used for the FY 2014 SNF PPS final rule.

TABLE 12—LABOR-RELATED RELATIVE IMPORTANCE, FY 2014 AND FY 2015

	Relative importance, labor-related, FY 2014 13:2 forecast [1]	Relative importance, labor-related, FY 2015 14:2 forecast [2]
Wages and salaries	49.118	48.816
Employee benefits	11.423	11.365
Nonmedical Professional fees: Labor-related	3.446	3.450
Administrative and facilities support services	0.499	0.502
All Other: Labor-related services	2.287	2.276
Capital-related (.391)	2.772	2.771
Total	69.545	69.180.

[1] Published in the **Federal Register**; based on second quarter 2013 IGI forecast.
[2] Based on second quarter 2014 IGI forecast, with historical data through first quarter 2014.

2. SNF Therapy Research Project

As discussed in the FY 2014 SNF PPS proposed rule (78 FR 26466, May 6, 2013), CMS contracted with Acumen, LLC and the Brookings Institution to identify potential alternatives to the existing methodology used to pay for therapy services received under the SNF PPS. Under the current payment model, the therapy payment rate component of the SNF PPS is based solely on the amount of therapy provided to a patient during the 7-day look-back period, regardless of the specific patient characteristics. The amount of therapy a patient receives is used to classify the resident into a RUG category, which then determines the per diem payment for that resident. In the FY 2014 SNF PPS proposed rule (78 FR 26466, May 6, 2013), we invited public comment on this project. In the FY 2014 SNF PPS final rule (78 FR 47963, August 6, 2013), we discussed the comments we received on this project, all of which supported the overall goals and objective of the project, and a few highlighted the importance of maintaining contact with the stakeholder community.

In the FY 2015 SNF PPS proposed rule (79 FR 25786), we provided an update on the current state of this project and invited public comments on this project. The comments we received on this topic, with their responses, appear below.

Comment: All of the comments we received on this work supported CMS's research effort in developing a new methodology for paying for therapy services received in the SNF. Most commenters urged CMS to expedite the research necessary to develop a new therapy payment model, with one commenter expressing disappointment that CMS has not implemented a model to date. A few commenters stated that CMS should seek input from stakeholders on how best to revise the current therapy payment model.

Response: We appreciate the broad support for this research initiative and understand the importance of completing this work in both a timely and efficient manner. We also recognize the importance of seeking input from stakeholders on how best to revise the current therapy payment model, which is why one of our central focuses in leading this research effort has been to solicit stakeholder feedback through listening sessions and through the creation of a SNF therapy research email box at *SNFTherapyPayments@cms.hhs.gov*. Stakeholders can send input on a revised therapy payment model to this email box at any time, and every email is read and considered by both CMS staff and contractors. We also plan to solicit feedback through more formal avenues such as a technical expert panel in the near future.

Currently, we are closely examining all of the models that have been suggested for improving SNF therapy payment, including but not limited to models developed by MedPAC and the Urban Institute. We will carefully consider suggested models such as these by using their best attributes, combined with all of the stakeholder feedback and ideas we are receiving, and intend to develop a payment model that will pay accurately and appropriately for SNF therapy services, while also incentivizing the most appropriate treatment for the individual patient's care needs. Additional considerations for a revised SNF therapy payment approach go beyond existing research and will also need to include implementation strategies for the revised therapy payment methodology, along with the incorporation of the revised therapy payment approach into a single payment system that also includes payment for nursing services.

In terms of the timeframe for completing this work and implementing a new payment model, we believe it would be premature at this time to speculate on when a new model will be ready to be implemented. As many of the comments on this issue indicate, it is very important to ensure that any change to the current therapy payment model addresses any concerns with the existing model, provides the proper incentives to treat patients in the most appropriate and efficient way, and provides sufficient time for providers to understand and prepare for implementation of such a model.

Comments on this topic may still be provided outside the rulemaking process, and these comments should be sent via email to *SNFTherapyPayments@cms.hhs.gov*. Information regarding this project can be found on the project Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/therapyresearch.html*.

3. Proposed Revisions to Policies Related to the Change of Therapy (COT) Other Medicare Required Assessment (OMRA)

In the FY 2015 SNF PPS proposed rule (79 FR 25786 through 25788), we discussed proposed changes to the existing COT OMRA policy which would permit providers to complete a COT OMRA for a resident who is not currently classified into a RUG–IV therapy group or receiving a level of therapy sufficient for classification into a RUG–IV therapy group, but only in those rare cases where the resident had qualified for a RUG–IV therapy group on a prior assessment during the resident's current Medicare Part A stay, and had no discontinuation of therapy services between Day 1 of the COT observation period for the COT OMRA that classified the resident into his/her current non-therapy RUG–IV group and the ARD of the COT OMRA that reclassified the patient into a RUG–IV therapy group. The comments we

received on this proposal, along with our responses, appear below.

Comment: All of the comments we received on this topic supported the proposed revision to the existing COT OMRA policies. One commenter stated that this proposal is not necessary, stating that the current COT OMRA policy already allows for providers to complete a COT OMRA in the circumstances proposed in the FY 2015 SNF PPS proposed rule.

Response: We appreciate the broad support we received on this proposal. With regard to the comment that this proposal is not necessary, we would note that the FY 2012 SNF PPS final rule (78 FR 48525 through 48526) and section 2.9 of the MDS RAI manual (available at *http://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/MDS30RAIManual.html*) clearly state that the COT OMRA is to be used in those cases where the patient is classified into a RUG–IV therapy category, or where the patient is receiving a level of therapy sufficient for classification into a therapy RUG (but is classified into a nursing RUG because of index maximization). That providers may have misinterpreted the rules and are currently using the COT OMRA in a manner that is inconsistent with these guidelines does not affect how the policy was finalized and implemented. We would encourage providers to examine their current COT OMRA completion protocols to ensure they are aligned with existing COT OMRA guidelines, as provided in the aforementioned references, and immediately address any assessments that were completed inappropriately.

Comment: Several commenters highlighted an issue in the second example that begins on page 25787 of the FY 2015 SNF PPS proposed rule. Specifically, these commenters pointed out that because the resident is no longer in a RUG–IV therapy group, an End of Therapy (EOT) OMRA would not be completed on this resident when the discontinuation of therapy occurs as this would violate the rules associated with the EOT OMRA, which require that the resident be in a RUG–IV therapy group for this assessment to be completed. These commenters requested that an additional example be added here to clarify this second example and the scope of this proposed revision. Finally, a few commenters requested that CMS provide as much detail as possible in this final rule regarding how this policy will be implemented and how this revision to the COT OMRA policy may affect other OMRAs.

Response: We agree with the commenters that the reference to completing an EOT OMRA in the second example on page 25787 of the FY 2015 SNF PPS proposed rule is incorrect. To address this issue, below we provide a new example that is intended to clarify the scope of this proposed revision to the COT OMRA policy.

Assume Mr. A is classified into the RUG group RUA on his 30-day assessment with an ARD set for Day 30 of his stay. On Day 37, the facility checks the amount of therapy that was provided to Mr. A and finds that while Mr. A did receive the requisite number of therapy minutes to qualify for this RUG category, he only received therapy on 4 distinct calendar days, which would make it impossible for him to qualify for an Ultra-High Rehabilitation RUG group. Moreover, due to the lack of 5 distinct calendar days of therapy and the lack of any restorative nursing services, Mr. A does not qualify for any therapy RUG group. As a result, the facility must complete a COT OMRA for Mr. A, on which he may only classify for a non-therapy RUG group. However, as opposed to the first example found on page 25787 of the FY 2015 SNF PPS proposed rule, where the resident's therapy continued during the week following the COT OMRA, let us assume the facility decides to discontinue his therapy services, with Day 39 representing the last day that Mr. A is provided therapy. The facility subsequently decides to provide Mr. A with therapy services due to observing Mr. A's deteriorating condition, with the first day of new therapy services being Day 48. On Day 54 (7 days following the day therapy began on Day 48, including Day 48) the facility reviews the therapy services provided to Mr. A during the prior week and finds that Mr. A would qualify for the RUG group RUA.

As intended in the second example in the FY 2015 SNF PPS proposed rule (79 FR 25787), this example represents a scenario where, under both the current and proposed COT OMRA policies, a COT OMRA may not be completed. This is because a discontinuation of therapy services occurred. To clarify our example and the scope of the proposed revision to the COT OMRA policy, we note that ''discontinuation of therapy services'' is defined in a manner consistent with how this phrase is described in the FY 2010 SNF PPS final rule (76 FR 40346 through 40349), the FY 2012 SNF PPS final rule (78 FR 48517 through 48522), and Chapter 2, Section 2.9, of the MDS RAI manual. Consistent with what constitutes a discontinuation of therapy more globally within the SNF PPS, a ''discontinuation of therapy'' here refers to the planned or unplanned discontinuation of all rehabilitation therapies for 3 or more consecutive days. This was the actual intent of the erroneous reference to the EOT OMRA in the FY 2015 SNF PPS proposed rule, as noted by these commenters. In essence, the same criteria used to determine the need for an EOT OMRA (which is that the resident does not receive therapy services for 3 consecutive calendar days) will be used under our revised COT OMRA policy to determine whether there has been a discontinuation of therapy services and thus whether a COT OMRA may be completed for a given resident. In the above example, since the resident did not receive therapy services for 8 days, this would represent a discontinuation of therapy services as defined above and the COT OMRA that was planned with an ARD of Day 54 would not be permissible, both under our current policy and under our proposed revised COT OMRA policy.

With regard to comments on how this revision would affect other OMRAs, the answer is that it does not have any impact on the other OMRAs within the SNF PPS. The rules and policies associated with all other assessment types remain the same. We also plan to provide additional details on the operation of this revised policy in a forthcoming MDS RAI manual revision, which would be effective October 1, 2014.

Accordingly, for the reasons specified in this final rule and in the FY 2015 SNF PPS proposed rule (79 FR 25786 through 25788), we are finalizing our proposal to permit providers, in certain circumstances (discussed below), to complete a COT OMRA for a resident who is not currently classified into a RUG–IV therapy group, or receiving a level of therapy sufficient for classification into a RUG–IV therapy group. As discussed above, this would be allowed only in those rare cases where the resident had qualified for a RUG–IV therapy group on a prior assessment during the resident's current Medicare Part A stay, and had no discontinuation of therapy services between Day 1 of the COT observation period for the COT OMRA that classified the resident into his/her current non-therapy RUG–IV group and the ARD of the COT OMRA that reclassified the patient into a RUG–IV therapy group. This change in policy will be effective October 1, 2014, with further details on how this policy will

be implemented to be provided in a forthcoming MDS RAI manual revision and other guidance, consistent with the way we have provided implementation details for other MDS RAI policy revisions (for example, see Transition for Implementation of FY 2014 SNF PPS MDS 3.0 Policy Changes, available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Spotlight.html*).

4. Civil Money Penalties (section 6111 of the Affordable Care Act)

In the FY 2015 SNF PPS proposed rule (79 FR 25788 through 25789), we discussed clarifications related to statutory requirements as specified in section 6111 of the Affordable Care Act regarding the approval and use of civil money penalties imposed by CMS. Further, we proposed changes to the CMS enforcement regulations at § 488.433 to clarify and strengthen these provisions to provide more specific instructions to states regarding the use of civil money penalties and the approval process, and to permit an opportunity for greater transparency and accountability of civil money penalty monies utilized by states. Finally, we invited public comment on our proposed changes as well as on CMS's proposed methods to ensure compliance with these requirements. The comments received on this topic, along with our responses, appear below.

Comment: A few commenters requested that we specify the requirements and CMS's expectations for soliciting civil money penalty funds and tracking approved civil money penalty projects. One commenter suggested that we establish a formula to determine how much is appropriate for a state to keep in reserve each year. Several commenters suggested that CMS should specify how information should be made public by the state, including the availability of grants, approved projects funded to date and the outcomes of previously funded projects. One commenter states that the proposed rule lacks clarity regarding what constitutes an ''acceptable'' state plan and how CMS would make such a determination.

Response: Specific operational details regarding our expectations for the state are not appropriate for inclusion in regulation. We plan to issue subsequent guidance regarding these operational details and publish this guidance in the State Operations manual.

Comment: One commenter asked if states will be required to share their acceptable plan for the effective use of civil money penalty funds with CMS. One commenter recommends formal CMS approval of all plans and public disclosure once the plan is approved. One commenter asked if CMS will require the acceptable plan be posted on some Web site.

Response: We will require states to submit their plans to their respective CMS Regional Offices for formal approval. We have revised § 488.433(e) to specify that the plan must be approved by CMS. Public reporting of particular information related to survey and certification information is addressed specifically in Sections 1819(g)(5) and 1819(i) of the Act (as amended by section 6103 of the Affordable Care Act) and directs CMS to publish relevant enforcement information.

Comment: One commenter asked if CMS has any plans to publicly report the amount of civil money penalty funds collected and returned to the states. Another commenter stated that CMS should publish a link to information on state's civil money penalty account balances on Nursing Home Compare. One commenter asked if the solicitation, acceptance and monitoring information of approved projects utilizing civil money penalty funds would be required to be posted on some Web site for transparency purposes. Several commenters suggested that CMS require information regarding state's use of civil money penalties to be posted online and updated annually. One commenter recommended that we include in the regulatory language at § 488.433(e)(2) that the information be publicly available at all times and updated, at least annually. One commenter requested that a link to information on state's use of civil money penalties be included on the Nursing Home Compare Web site. One commenter asked CMS to specify what the reporting timeframe would be. This commenter also asked if State Medicaid Web sites would be an acceptable place to post civil money penalty information on, what the duration of the posting would be, and finally, if states would be required to post previously approved civil money penalty projects prior to the effective date of this ruling.

Response: We will make key information publicly available regarding approved projects, CMP grant awards, and CMP funds disbursed to states. We will explore appropriate methods to present information in a manner that will be accessible and meaningful to the public. Currently, all projects that a state is recommending for approval are submitted to the CMS Regional Office for final approval. The CMS Regional Office is tracking all approved projects and submits this information to the CMS Central Office at least annually. Additionally, we will prepare an annual transparency report on approved civil money penalty projects. We will be posting this annual report on the CMS Web site. We expect the states to provide information in their plans for utilizing CMP funds to CMS on an annual basis to permit CMS to make a national report available on an annual basis; preferably aligning with the current civil money penalty uses transparency report which is compiled on a calendar year basis. The additional information required as a result of this rule would apply to all projects approved after the rule's effective date.

In response to these comments, we will consider issuing guidance to states regarding making the information about their state plans for civil money penalties as well as approved civil money penalty projects publicly available, as required in this final rule, by posting on a state Web site and making sure that this information is updated on an annual basis. As to the length of time of the posting, we would anticipate that states would post a new report about the use of penalty funds on an annual basis that would include currently funded projects as well as information, or links to the information, for projects funded after this regulation even if the projects have ended.

Comment: One commenter asked us to clarify what the terms ''results of projects'' and ''other key information'' would involve when we proposed that states ''make information about the use of civil money penalty funds publicly available, including about the dollar amount awarded for approved projects, the grantee or contract recipients, the results of projects, and other key information.''

Response: We expect that states track the results of approved projects. Projects funded with civil money penalty monies should have clear goals and methodologies to achieve those goals. States will be required to make information available about the outcome or results of completed projects. These results should include the grant recipient, amount and duration of the grant, purpose and goals of the project, results of the project (for example, whether or not the project was successful), lessons learned, and similar key information, such as whether improvements have been institutionalized as a result of the project. Most importantly, we hope that the publicly-shared information would help others to gain insight into the methodologies to achieve important quality of care or quality of life goals,

even if the project was not successful in achieving such goals within the time period of the civil money penalty grant.

Comment: One state asked that if there is a year when a state does not receive civil money penalty proposals that meet the CMS criteria, what would be the required next steps for a state to take.

Response: If there is a year that a state has actively solicited for proposals and still receives no proposals that meet the CMS criteria for approval, then we would work with the state to explore opportunities to fund worthwhile projects that would benefit nursing home residents. We would do this by looking at the state's solicitation process, using successful projects that have been funded by other states as a model, and offering any guidance necessary to ensure that civil money penalty funds are being utilized for their intended purpose.

Comment: We received several comments regarding the language at § 488.433(b)(4), specifically on the potential that civil money penalty funds could be used for technical assistance for facilities implementing quality assurance and performance improvement (QAPI) programs. Commenters stated that quality assurance and performance improvement is a facility's responsibility and it will also soon be a requirement of participation. They stressed that civil money penalty funds should not be given to facilities to perform activities that they are already required and paid to perform under federal law. They noted that while language at § 6111 of the Affordable Care Act authorizes the use of civil money penalties for ''technical assistance for facilities implementing quality assurance programs;'' general language about quality assurance should not be interpreted to include QAPI.

Response: We agree that civil money penalty funds should not be used to pay for activities, functions, or products that nursing homes are required to provide. At the same time, we believe there is a tremendous need for knowledge and sharing of important ways to provide care and achieve results that may transcend the basic requirements in our regulations. Because there is a challenge to providing technical assistance while avoiding any supplanting of nursing home responsibilities, we require that proposed projects be approved by CMS and publicly reported. We expect, over time, that we will learn more about the projects that achieve the appropriate balance between providing effective technical assistance that advances the quality of care and quality of life for residents without supplanting what nursing homes are already required to do. At the present time we have already identified in CMS published guidance a variety of uses that are prohibited, and believe that the identified prohibitions are sufficient for now. With regard to QAPI in particular, section 1128I(c) of the Act directs CMS to provide technical assistance to facilities on the development of best practices in order to meet CMS' established QAPI standards. We expect most of the technical assistance will be done by the Quality Improvement Organizations (QIOs), but do not rule out the use of CMP funds for very targeted purposes that the QIOs are not able to accomplish, especially for nursing homes that have a high reliance on Medicaid funding or are among the lowest-performing facilities. Further, at the present time there is no federal requirement for nursing homes to have a QAPI system, so there is little potential for supplanting facility compliance with a current expectation. Under section 1128I(c), following promulgation of regulations, all facilities will be required to develop and implement a QAPI program in the future, and we plan to administer the CMP funds in a manner that avoids supplanting of facility responsibilities when those rules become effective.

Comment: While the proposed language at § 488.433(b)(5) addresses and expands the appropriate use of civil money penalties for the infrastructure of the temporary management remedy, one commenter does not feel this provision will help as facilities cannot afford the temporary manager salary. This commenter urges CMS to allow facilities to use civil money penalties to pay the salaries of temporary managers when the alternative is decertification of the facility.

Response: At § 488.433(b)(5), we proposed to clarify in a new paragraph that in extraordinary situations involving closure of a facility, civil money penalty funds may be used to pay the salary of a temporary manager. Such a circumstance is very narrowly construed to situations where CMS concludes that it is otherwise infeasible to ensure timely payment for such a manager by the facility and CMS determines that extraordinary action is necessary in order to protect the residents until relocation efforts are successful. However, as specified in § 488.415(c), in all other circumstances a temporary manager's salary must be paid by the facility. We do not propose to change this basic responsibility of a nursing home to pay the salary of the temporary manager.

Comment: One commenter stated that they did not support the use of civil money penalty funds for the joint training of facility staff and surveyors and suggested that this use be a low level priority, be limited, and include other interested parties, such as consumers, ombudsman and advocates. This commenter also urged CMS to restore the language at the end of proposed § 488.433(b)(4) which is included in current regulations, ''. . . when such facilities have been cited by CMS for deficiencies in the applicable requirements.''

Response: We believe that there are benefits for joint training between State survey agencies and nursing home providers to improve understanding of federal requirements and to communicate specific policies and procedures. In fact, we have sponsored such joint trainings on a national basis dating back to the implementation of the nursing home reform provisions of Omnibus Budget Reconciliation Act of 1987 (OBRA '87) to train both states and providers in the new health and safety requirements and enforcement rules. To provide optimum flexibility of such training, we do not propose to limit or to require other stakeholders in joint trainings nor do we propose to limit the facilities that may utilize civil money penalty funds for joint training to only those facilities that have been cited by CMS for deficiencies under the applicable requirements. However, we do agree that this is a lower-priority use of CMP funds and ought to be limited to special situations. We will further address this issue in CMS guidance.

Comment: One commenter suggested that CMS should not limit itself to only withholding future civil money penalty disbursements in cases where states routinely failed to comply with the acceptable use of civil money penalty funds. They suggested referral to the Office of the Inspector General, or the recoupment of such funds. Another commenter recommended that we require states that failed to comply to submit an acceptable plan of correction within 30 days. They further suggested that, until an acceptable plan of correction had been submitted and approved by CMS, that CMS continue to award these civil money penalty funds to entities whose applications for use of such funds met CMS criteria. It was also suggested that a statement that CMS is withholding funds due to a state's non-compliance be posted clearly and visibly on the state survey agency's Web site. Additionally, it was urged that CMS monitor a withheld state's civil money penalty activity on a quarterly

basis for at least one year after funds are once again distributed.

Response: Specific operational details regarding the withholding of future civil money penalty disbursements to a state are not appropriate for inclusion in regulation. We plan to issue subsequent guidance regarding these operational details and publish this guidance in the State Operations Manual. While we appreciate the suggestions offered for further enforcement action when states are not complying with the acceptable uses of civil money penalty funds as specified in § 488.433, we are optimistic that the possibility of funds being withheld will be incentive enough for states to comply with this regulation. While we do not rule out the idea of posting public information about a state that has had funds withheld, we expect that any withholding would be short-lived. We will take under advisement the additional suggestions offered by commenters for future consideration.

Comment: Several commenters suggested that CMS develop a standardized application for use of civil money penalty funds. This application should clearly articulate how the proposed use is not duplicative of statutorily mandated services, including those related to quality of care or quality of life, and how residents, families, long term care ombudsman and consumer representatives were included in the development of the proposed use and how they will be engaged in the project activities.

Response: We agree, and will develop a standardized application that states may make available to any entities seeking to submit proposals for projects to be funded with civil money penalties. We expect that such a template should be completed by early CY 2015.

Comment: One commenter suggested that CMS allow states more autonomy to award civil money penalty funds to applicants consistent with CMS-prescribed guidelines. They further noted that because states vary in their specific needs, they are more knowledgeable about how to best meet their needs in order to best serve the beneficiaries and residents/patients of nursing centers within the state.

Response: We will consider ways in which states may gain more autonomy over time, as we learn more about projects that are successful, are able to fully implement the additional processes in this regulation, and work with stakeholders. We recognize the critical role that states play and wish to bolster state ability to use civil money penalty funds effectively. Under the arrangements already in place, proposals for projects utilizing civil money penalty funds are submitted directly to the state survey agency. The state conducts the initial review of all proposals and forwards those that meet CMS criteria and that they are recommending for final approval to the CMS regional office. We believe the regulations we are finalizing here will make the entire state civil money penalty program more coherent, more transparent, and more effective.

Comment: One commenter recommends that states be allowed to align their civil money penalty grant process with their fiscal year in order to coordinate existing state grant process timeframes.

Response: We have no objections to states aligning their civil money penalty grant process with their fiscal year.

5. Observations on Therapy Utilization Trends

In the FY 2015 SNF PPS proposed rule, we discussed recent observed trends related to therapy service provision under the SNF Part A benefit, specifically with regard to overall therapy case-mix distribution trending toward more residents classifying into the Ultra-High Rehabilitation groups, and therapy being reported on the MDS in amounts that are just enough to surpass the relevant therapy minute threshold for a given therapy RUG category. We also posted a memo on the SNF PPS Web site (available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPPS/Spotlight.html*) which discussed these trends in greater depth. Finally, we invited comment on the data presented in the proposed rule (and associated memo) and the discussion of observed trends. The comments we received on this topic, as well as our responses, appear below.

Comment: We received a number of comments on the discussion of observed therapy trends. All of the commenters supported CMS in monitoring these trends, with a few offering their own data analytics surrounding the same issues raised in the memo referenced above. A few commenters highlighted the lack of current medical evidence related to how much therapy a given resident should receive. One commenter recommended that CMS ensure that access to specialty populations be accounted for in our monitoring efforts. Another commenter highlighted that the trends memo provides evidence of concerns and issues of which they have become aware related to therapy minute demands on practitioners, shortened evaluation times, and pressure to reduce services inappropriately. This commenter also noted that the minimum minutes for a RUG level are often perceived as maximum minutes and that some providers may implement internal rules that prohibit clinicians, against their own professional judgment from providing therapy above the RUG levels.

Response: We appreciate the support for our continued monitoring efforts. As always, we appreciate any assistance that stakeholders may wish to provide in terms of understanding existing trends and data.

With regard to the comments which highlight the lack of existing medical evidence for how much therapy a given resident should receive, we would note that the trends memo was not intended to address such an issue. The memo was merely intended to highlight a trend indicating that, the current state of medical evidence on this point notwithstanding, the number of therapy minutes provided to SNF residents within certain therapy RUG categories is, in fact, clustered around the minimum thresholds for a given therapy RUG category. However, given the comments highlighting the lack of medical evidence related to the appropriate amount of therapy in a given situation, it is all the more concerning that practice patterns would appear to be as homogenized as the data would suggest.

With regard to the comment on specialty populations, we agree with the commenter that access must be preserved for all categories of SNF residents, particularly those with complex medical and nursing needs. As appropriate, we will examine our current monitoring efforts to identify any revisions which may be necessary to account appropriately for these populations.

With regard to the comment which highlighted potential explanatory factors for the observed trends, such as internal pressure within SNFs that would override clinical judgment, we find these potential explanatory factors troubling and entirely inconsistent with the intended use of the SNF benefit. Specifically, the minimum therapy minute thresholds for each therapy RUG category are certainly not intended as ceilings or targets for therapy provision. As discussed in Chapter 8, Section 30 of the Medicare Benefit Policy Manual (Pub. 100–02), to be covered, the services provided to a SNF resident must be ''reasonable and necessary for the treatment of a patient's illness or injury, that is, are consistent with the nature and severity of the individual's illness or injury, *the individual's particular medical needs,* and accepted standards of medical practice.''

(emphasis added) Therefore, services which are not specifically tailored to meet the individualized needs and goals of the resident, based on the resident's condition and the evaluation and judgment of the resident's clinicians, may not meet this aspect of the definition for covered SNF care, and we believe that internal provider rules should not seek to circumvent the Medicare statute, regulations and policies, or the professional judgment of clinicians.

6. Accelerating Health Information Exchange in SNFs

In the FY 2015 SNF PPS proposed rule, we included a discussion of our commitment to accelerating Health Information Exchange (HIE) in SNFs. Specifically, we noted that the Department is committed to accelerating HIE through the use of electronic health records (EHRs) and other types of health information technology across the broader care continuum through a number of initiatives including: (1) Alignment of incentives and payment adjustments to encourage provider adoption and optimization of health information technology and HIE services through Medicare and Medicaid payment policies; (2) adoption of common standards and certification requirements for interoperable health information technology; (3) support for privacy and security of patient information across all HIE-focused initiatives; and (4) governance of health information networks. A discussion of the comments received on this topic, with our response, appears below.

Comment: All of the comments received on this topic supported the overall agency goal to accelerate HIE within SNFs, and among post-acute care providers generally. A few commenters urged CMS to consider potential barriers to HIE for certain providers, such as those within mountainous or rural areas where connectivity may be an issue. Other commenters also asked that CMS continue to coordinate with the Office of the National Coordinator for Health Information Technology. One commenter asked CMS to consider providing a financial incentive for providers to adopt health information technology.

Response: We appreciate the broad support for this initiative and the helpful suggestions provided by the commenters. We will share these comments with the appropriate CMS staff and other governmental agencies to ensure they are taken into account as we continue to encourage adoption of health information technology.

7. SNF Value Based Purchasing

As noted above, on April 1, 2014, PAMA (Pub. L. 113–93) was enacted. Section 215 of PAMA, titled ''Skilled nursing facility value-based purchasing,'' amended section 1888 of the Social Security Act (42 U.S.C. 1395yy) to create new subsections (g) and (h). The provisions of PAMA, including section 215, may be viewed at *http://www.gpo.gov/fdsys/pkg/BILLS-113hr4302enr/pdf/BILLS-113hr4302enr.pdf*. We will engage in future rulemaking, as appropriate, to implement this section of PAMA.

V. Provisions of the Final Rule; Regulations Text

As discussed in section IV.B. of this final rule, we are updating the payment rates under the SNF PPS for FY 2015 as required by section 1888(e)(4)(E)(ii) of the Act. In addition, we will use the most current OMB delineations (discussed in section IV.D.1) to identify a facility's urban or rural status for the purpose of determining which set of rate tables will apply to the facility. Also, effective October 1, 2015, we will use ICD–10–CM code B20 (in place of ICD–9–CM code 042) to identify those residents for whom it is appropriate to apply the AIDS add-on. Further, as discussed in section IV.D.1 of this final rule, we are finalizing changes to the wage index based on the most current OMB delineations, including a 1-year transition with a blended wage index for all SNFs for FY 2015; revising the policy governing use of the COT OMRA (section IV.D.3); and finalizing changes to the enforcement regulations related to civil money penalties utilized by states (section IV.D.4.).

With reference to the civil money penalty provisions discussed in section IV.D.4. of this final rule, as proposed we are modifying current CMS regulations to provide further clarification to states and the public regarding prior approval and appropriate use of these federally-imposed civil money penalty funds.

At § 488.433, civil money penalties: Uses and approval of civil money penalties imposed by CMS, we will amend the regulation to specify that civil money penalties may not be used for state management operations except for the reasonable costs that are consistent with managing the projects utilizing civil money penalty funds; specify that all activities utilizing civil money penalty funds must be approved in advance by CMS; outline specific requirements that must be included in proposals submitted for CMS approval; specify that CMP funds may not be used for projects that have not been approved by CMS; specify that states are responsible for soliciting, accepting, monitoring and tracking the results of all approved activities utilizing civil money penalties and making this information publicly available on at least an annual basis; specify that state plans must ensure that a core amount of civil money penalty funds will be held in reserve for emergencies, such as relocation of residents in the event of involuntary termination from Medicare and Medicaid; and, specify steps CMS will take if civil money penalty funds are being used for disapproved purposes or not being used at all, in other words, that CMS has authority to take appropriate steps to ensure that these funds are used for their intended purpose, such as withholding future disbursements of CMP amounts.

The revised CMS regulations will explicitly clarify the intended use of these civil money penalty funds (including the processes for prior approval of all activities using civil money penalty funds by CMS) and how CMS will address a state's use of civil money penalty funds for activities that have been disapproved by CMS or used by states for activities other than those explicitly specified in statute or regulations.

At § 488.433(a), we clarify that approved projects may work to improve residents' quality of life and not just quality of care. We also clarify that while states may not use funds for survey and certification operations or state expenses, they may use a reasonable amount of civil money penalty funds for the actual administration of grant awards, including the tracking, monitoring, and evaluating of approved projects. Some states have maintained that effective use and management of the civil money penalty funds requires more state oversight and planning than they are able to provide currently, and that an allowance for such management would remove a barrier to the effective use of these funds. We did not propose a monetary or numeric limit on what might be considered reasonable, although one to three percent of available funds might be considered reasonable for an established fund.

At § 488.433(b)(5), we clarify in a new paragraph that in extraordinary situations involving closure of a facility, civil money penalty funds may be used to pay the salary of a temporary manager when CMS concludes that it is infeasible to ensure timely payment for such a manager by the facility. We have encountered situations, for example, in which a facility is in bankruptcy and the court has frozen all funds at the very

time that residents are being relocated and closure is proceeding. In another situation involving involuntary termination from Medicare and impending closure of the facility, the facility was not making payments for staff or for its utilities, and residents were at risk due to the imminent departure of staff and the absence of a manager. While § 489.55 permits Medicare and Medicaid payments to a facility to continue for up to 30 days after the effective date of a facility's termination or possibly longer (or shorter) if a facility has submitted a notification of closure under § 483.75(r) in order to promote the orderly and safe relocation of residents, if the continued Medicare and Medicaid payments are being used to pay for facility operations during the relocation period but are being diverted elsewhere by the facility, then residents may be placed at increased risk. The change at § 488.433(b)(5) clarifies not only that CMS places a priority on resident protection and protection of the Trust Fund and allows such emergency use of civil money funds, but that CMS also intends to stop or suspend the payments to the facility under § 489.55 when such a situation occurs.

At new § 488.433(c), we specify the requirements for all civil money penalty fund proposals being submitted to CMS for approval.

At new § 488.433(d), we provide that civil money penalty funds may not be used for activities that have been disapproved by CMS.

At new § 488.433(e), we provide that states must maintain an acceptable plan (approved by CMS) for the effective use of civil money penalty funds, including a description of methods by which the state will solicit, accept, monitor, and track approved projects funded by civil money penalty amounts and make key information publicly available. Examples of information that must be publicly available would include information on the projects that have been approved by CMS, the grantee and project recipients, the dollar amounts of projects approved, and the results of the projects. We also clarify that these plans provide for a core amount of funds that will generally be held in reserve for emergencies such as unplanned relocation of residents pursuant to an involuntary termination from Medicare and Medicaid, unless the state's plan demonstrates the availability of other funds to cover emergency situations, and a reasonable aggregate amount of civil money penalty funds, beyond the emergency reserve amount, that the state expects to disburse each year for grants or contracts of projects that benefit residents and are consistent with the statute and CMS regulations. We appreciate that states may wish to develop a multi-year plan and provide an approximate range of total amount that the state plans to disburse. The intent is to ensure there is an acceptable plan, and that a state is prepared to respond to emergencies while at the same time is not maintaining a large unused amount of civil money penalty funds.

In § 488.433(f), we provide that CMS may withhold future disbursement of collected civil money penalty funds to a state if CMS finds that the state has not spent such funds in accordance with the statute and regulations, fails to make use of funds to benefit the quality of care or life of residents, or fails to maintain an acceptable plan approved by CMS.

VI. Collection of Information Requirements

In the May 6, 2014, proposed rule (79 FR 25767) we solicited public comment on that rule's information collection requirements. While PRA-related comments were received, the proposed rule (and this final rule) does not contain any new or revised recordkeeping, reporting, or third-party disclosure requirements. Consequently, this rule does not require additional OMB review/approval under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). A summary of the comments and our response can be found in section IV.D.4. of this preamble under, ''Civil Money Penalties (section 6111 of the Affordable Care Act).''

VII. Economic Analyses

A. Regulatory Impact Analysis

1. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), 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 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, 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 necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an economically significant rule, under section 3(f)(1) of Executive Order 12866 and a major rule under the Congressional Review Act. Accordingly, we have prepared a regulatory impact analysis (RIA) as further discussed below. Also, the rule has been reviewed by OMB.

2. Statement of Need

This final rule updates the SNF prospective payment rates for FY 2015 as required under section 1888(e)(4)(E) of the Act. It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to ''provide for publication in the **Federal Register**'' before the August 1 that precedes the start of each fiscal year, the unadjusted federal per diem rates, the case-mix classification system, and the factors to be applied in making the area wage adjustment. As these statutory provisions prescribe a detailed methodology for calculating and disseminating payment rates under the SNF PPS, we do not have the discretion to adopt an alternative approach. In addition, this final rule clarifies statutory requirements and intent as specified in section 6111 of the Affordable Care Act regarding the approval and use of civil money penalties imposed by CMS.

3. Overall Impacts

This final rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2014 (78 FR 47936). Based on the above, we estimate that the aggregate impact would be an increase of $750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as adjusted by the MFP adjustment. The impact analysis of this final rule represents the projected effects of the changes in the SNF PPS from FY 2014 to FY 2015. Although the best data available are utilized, there is no attempt to predict behavioral responses to these changes, or to make adjustments for future changes in such variables as days or case-mix.

Certain events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented and, thus, very susceptible to forecasting errors due to certain events that may occur within the assessed impact time period. Some examples of possible events may include newly-legislated general Medicare program

funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of previously-enacted legislation, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact and, thus, the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with sections 1888(e)(4)(E) and 1888(e)(5) of the Act, we update the FY 2014 payment rates by a factor equal to the market basket index percentage change adjusted by the FY 2013 forecast error adjustment (if applicable) and the MFP adjustment to determine the payment rates for FY 2015. As discussed previously, for FY 2012 and each subsequent FY, as required by section 1888(e)(5)(B) of the Act as amended by section 3401(b) of the Affordable Care Act, the market basket percentage is reduced by the MFP adjustment. The special AIDS add-on established by section 511 of the MMA remains in effect until ''. . . such date as the Secretary certifies that there is an appropriate adjustment in the case mix. . . .'' We have not provided a separate impact analysis for the MMA provision. Our latest estimates indicate that there are fewer than 4,355 beneficiaries who qualify for the add-on payment for residents with AIDS. The impact to Medicare is included in the ''total'' column of Table 13. In updating the SNF PPS rates for FY 2015, we made a number of standard annual revisions and clarifications mentioned elsewhere in this final rule (for example, the update to the wage and market basket indexes used for adjusting the federal rates).

The annual update set forth in this final rule applies to SNF PPS payments in FY 2015. Accordingly, the analysis that follows only describes the impact of this single year. In accordance with the requirements of the Act, we will publish a notice or rule for each subsequent FY that will provide for an update to the SNF PPS payment rates and include an associated impact analysis.

As discussed in section IV.D.4 of this final rule, we also clarify statutory requirements and intent as specified in section 6111 of the Affordable Care Act regarding the approval and use of civil money penalties imposed by CMS. There would be no impact to states unless they failed to follow the new regulations regarding the approval and use of civil money penalty funds. In FY 2011, the approximate total amount of civil money penalties returned to the states was $28 million. In FY 2012, the approximate total amount of civil money penalties returned to the states was $32 million. In FY 2013, the approximate total amount of civil money penalties returned to the states was $35 million. The estimated amount that we expect to be returned to the states in FY2015, based on data from previous years, is approximately $33 million. These payments to the states would only be withheld in the event that states did not spend civil money penalty funds in accordance with the statute and this regulation, or failed to make use of funds to benefit the quality of care or life of residents, or failed to maintain an acceptable plan for the use of these funds. Even if civil money penalty funds are withheld from a state, we expect that the state would eventually come into compliance and that the state would later again be eligible to receive civil money penalty funds.

4. Detailed Economic Analysis

The FY 2015 impacts appear in Table 13. Using the most recently available data, in this case FY 2013, we apply the current FY 2014 wage index and labor-related share value to the number of payment days to simulate FY 2014 payments. Then, using the same FY 2013 data, we apply the FY 2015 wage index, as discussed in section IV.D.1 of this final rule, and labor-related share value to simulate FY 2015 payments. We tabulate the resulting payments according to the classifications in Table 13 (for example, facility type, geographic region, facility ownership), and compare the difference between current and proposed payments to determine the overall impact. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, census region, and ownership.

The first row of figures describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the new OMB delineations that we are implementing beginning in FY 2015. Facilities should use these OMB delineations to identify their urban or rural status for purposes of identifying what areas of the impact table would apply to them beginning on October 1, 2014. The next nineteen rows show the effects on facilities by urban versus rural status by census region. The last three rows show the effects on facilities by ownership (that is, government, profit, and non-profit status).

The second column shows the number of facilities in the impact database.

The third column shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available, without taking into account the revised OMB delineations. That is, the impact represented in this column is solely that of updating from the FY 2014 wage index to the FY 2015 wage index without any changes to the OMB delineations. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the effect of adopting the updated OMB delineations (as set forth in OMB Bulletin No. 13–01) for wage index purposes for FY 2015, independent of the effect of using the most recent wage data available, captured in Column 3. That is, the impact represented in this column is that of using the revised OMB delineations, and utilizing the blended wage index finalized in section IV.D.1.b.v above. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fifth column shows the effect of all of the changes on the FY 2015 payments. The update of 2.0 percent (consisting of the market basket increase of 2.5 percentage points, reduced by the 0.5 percentage point MFP adjustment) is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 2.0 percent, assuming facilities do not change their care delivery and billing practices in response.

As illustrated in Table 13, the combined effects of all of the changes vary by specific types of providers and by location. For example, due to changes in this rule, providers in the rural Pacific region would experience a 4.8 percent increase in FY 2015 total payments.

TABLE 13—RUG–IV PROJECTED IMPACT TO THE SNF PPS FOR FY 2015

	Number of facilities FY 2015	Update wage data (percent)	Update OMB delineations (percent)	Total change (percent)
Group:				
Total	15,399	0.0	0.0	2.0
Urban	10,862	0.0	0.0	2.0
Rural	4,537	0.2	−0.2	1.9
Hospital based urban	574	0.1	0.0	2.1
Freestanding urban	10,288	0.0	0.0	2.0
Hospital based rural	640	0.2	−0.3	1.9
Freestanding rural	3,897	0.2	−0.2	1.9
Urban by region:				
New England	803	0.7	0.0	2.7
Middle Atlantic	1,490	0.0	0.2	2.1
South Atlantic	1,853	−0.3	0.0	1.7
East North Central	2,054	0.0	0.0	2.0
East South Central	544	−0.7	0.1	1.3
West North Central	889	−0.1	0.1	2.0
West South Central	1,293	−0.7	0.0	1.3
Mountain	501	0.2	0.0	2.2
Pacific	1,429	0.5	0.0	2.5
Outlying	6	0.8	−0.1	2.6
Rural by region:				
New England	144	0.5	0.1	2.6
Middle Atlantic	228	1.6	−1.6	2.0
South Atlantic	504	−0.2	−0.2	1.6
East North Central	925	−0.1	0.0	2.0
East South Central	533	−0.3	−0.2	1.5
West North Central	1,093	0.2	−0.1	2.1
West South Central	770	0.2	−0.4	1.8
Mountain	235	−0.6	0.0	1.4
Pacific	105	2.8	−0.1	4.8
Outlying	0	0.0	0.0	2.1
Ownership:				
Government	852	0.1	−0.1	2.0
Profit	10,784	0.0	−0.1	1.9
Non-profit	3,763	0.1	−0.1	1.9

Note: The Total column includes the 2.5 percent market basket increase, reduced by the 0.5 percentage point MFP adjustment. Additionally, we found no SNFs in rural outlying areas.

5. Alternatives Considered

As described above, we estimate that the aggregate impact for FY 2015 would be an increase of $750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as adjusted by the MFP adjustment.

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994 through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

With regard to our implementation of the revised OMB delineations discussed in section IV.D.1 above, we considered a number of potential alternatives in the FY 2015 SNF PPS proposed rule (79 FR 25793 through 25795), which we also address here.

We considered having no transition period and fully implementing the new OMB delineations beginning in FY 2015. This would mean that we would adopt the revised OMB delineations for all providers on October 1, 2014. However, this would not provide any time for providers to adapt to the new OMB delineations. As discussed above, more providers will experience a decrease in wage index due to implementation of the new OMB delineations than will experience an increase. Thus, we believe that it is appropriate to provide for a transition period to mitigate the resulting short-term instability and negative impact on these providers, and to provide time for providers to adjust to their new labor market area delineations. Furthermore, in light of the comments received during the FY 2006 rulemaking cycle on our proposal in the FY 2006 SNF PPS proposed rule (70 FR 29094 through 29095) to adopt the new CBSA definitions without a transition period, we anticipated that providers would have similar concerns with not having a transition period for the new OMB delineations. Therefore, similar to the policy adopted in the FY 2006 SNF PPS final rule (70 FR 45041) when we first adopted OMB's CBSA definitions for purposes of the SNF PPS wage index, we are implementing a 1-year transition blended wage index for all SNFs to assist providers in adapting to the new OMB delineations. In determining an appropriate transition methodology,

consistent with the objectives set forth in the FY 2006 SNF PPS final rule (70 FR 45041), we looked for approaches that would provide relief to the largest percentage of adversely-affected SNFs with the least impact to the rest of the facilities.

First, we considered transitioning the wage index to the revised OMB delineations over a number of years in order minimize the impact of the wage index changes in a given year. However, we also believe this must be balanced against the need to ensure the most accurate payments possible, which supports the use of a shorter transition to the revised OMB delineations. As discussed above in section IV.D.1 of this final rule, we believe that using the most current OMB delineations will increase the integrity of the SNF PPS wage index by creating a more accurate representation of geographic variation in wage levels. As such, we believe that utilizing a 1-year (rather than a multiple year) transition with a blended wage index in FY 2015 strikes the best balance.

Second, we considered what type of blend would be appropriate for purposes of the transition wage index. We proposed that providers would receive a 1-year blended wage index using 50 percent of their FY 2015 wage index based on the proposed new OMB delineations and 50 percent of their FY 2015 wage index based on the FY 2014 OMB delineations. We believe that a 50/50 blend best mitigates the negative payment impacts associated with the implementation of the new OMB delineations. While we considered alternatives to the 50/50 blend, we believe this type of split balances the increases and decreases in wage index values associated with the transition, as well as provides a readily understandable calculation for providers.

Next, we considered whether or not the blended wage index should be used for all providers or for only a subset of providers, such as those providers that would experience a decrease in their respective wage index values due to implementation of the revised OMB delineations. As required in Section 1888(e)(4)(G)(ii) of the Act, the wage index adjustment must be implemented in a budget neutral manner. As such, as discussed in the FY 2015 SNF PPS proposed rule (79 FR 25785), if we were to apply the blended wage index only to those providers that would experience a decrease in their respective wage index values due to the implementation of the revised OMB delineations, the budget neutrality factor calculated based on this approach would reduce the base rates for all providers. Pursuing this type of transition policy would, in effect, aid the 21 percent of SNFs experiencing a decrease in their wage index due to the new OMB delineations (who would nevertheless also experience a decrease in their base rates under this alternative) at the expense the remaining 79 percent of SNFs, all of which would experience a decrease in their base rates due to the budget neutrality adjustment (including those SNFs experiencing either no change or an increase in their wage index under the new OMB delineations). However, as discussed in the FY 2015 SNF PPS proposed rule (79 FR 25785), if we apply the blended wage index to all providers, the resulting budget neutrality factor would not reduce the base rates for any provider. As discussed in the FY 2015 SNF PPS proposed rule, our goal in implementing a transition is to provide relief to the largest percentage of adversely affected SNFs with the least impact to the rest of facilities. We believe that the application of a one-year transition blended wage index for all providers best achieves this goal, as it mitigates the negative payment impacts of the new OMB delineations for adversely affected SNFs, without reducing the base rates for all providers.

As discussed in section IV.D.1 above, some commenters also suggested that CMS consider a 3-year transition methodology similar to that proposed in the FY 2015 IPPS proposed rule. In the FY 2015 IPPS proposed rule, CMS proposed a 3-year transition for those hospitals that are currently in urban areas that would become rural under the new OMB delineations, under which such hospitals would receive the urban wage index of the CBSA in which they are currently located for FY 2014 for a period of three fiscal years (see the FY 2015 IPPS proposed rule, 79 FR 28060). However, there are important differences between the IPPS and SNF PPS which give rise to different implementation and impact considerations. Most notably, IPPS hospital providers are subject to the rural floor, which requires that the wage index applicable to any hospital located in an urban area of a state not be less than the rural wage index of the state (see the FY 2015 IPPS proposed rule, 79 FR 28068). This guarantees that the wage index for rural hospitals is not greater than the wage index of any urban hospitals in the same state. As a result, hospitals moving from urban to rural status under the new OMB delineations are more likely to experience a decrease in their wage index, while hospitals moving from rural to urban status under the new OMB delineations are more likely to experience an increase in their wage index. This is not the case in the SNF PPS, where the rural floor is not applied and such differential impacts on urban and rural providers do not exist. Under the SNF PPS, the subsets of providers that will experience increases and decreases in wage index due to implementation of the new OMB delineations are quite varied. For example, 22 SNFs changing from urban to rural status under the new OMB delineations will have a higher wage index than they had in their urban CBSA. This would be less likely to occur if the rural floor were applied under the SNF PPS. Given the impacts discussed above, we believe that the 3-year transition policy proposed in the FY 2015 IPPS proposed rule and discussed above is not necessary or appropriate to address the impacts on SNF providers. By contrast, under the IPPS, hospitals currently located in urban areas that would become rural under the revised OMB delineations are more likely to experience a wage index decrease as discussed above, raising concerns over the potential adverse impact of the new OMB delineations on those hospitals that are specific to the IPPS. Therefore, we do not agree with the commenter that a 3-year transition policy, similar to that proposed under the IPPS, should be applied to those SNFs changing from urban to rural status under the new OMB delineations.

To further address commenters' general suggestion that we utilize similar implementation policies as were proposed for hospital providers in the FY 2015 IPPS proposed rule, we also considered whether it would appropriate to apply a variation of the 3-year transition discussed above, pursuant to which all SNFs that would experience a decrease in their wage index under the new OMB delineations would receive the wage index of the CBSA in which they are currently located for FY 2014 for a period of three fiscal years. This would involve applying a different transition policy for this subset of SNFs (allowing them to maintain the wage index of the CBSA in which they are currently located for three fiscal years) than would be applied to other SNFs. However, because revisions in the SNF PPS wage index must be made in a budget neutral manner, as required by section 1888(e)(4)(G)(ii) of the Act, if such a 3-year transition policy were to be applied to this subset of providers, the resulting budget neutrality adjustment would

reduce the base payment rates for all SNFs in FY 2015, as well as potentially reduce base rates for each of the two additional years during which this transition policy would be in effect. In terms of the overall impact on SNFs, pursuing this type of transition policy would, in effect, aid the 21 percent of SNFs experiencing a decrease in their wage index due to the new OMB delineations (who would nevertheless also experience a decrease in their base rates under this alternative) at the expense the remaining 79 percent of SNFs, all of which would experience a decrease in their base rates due to the budget neutrality adjustment (including those SNFs experiencing either no change or an increase in their wage index under the new OMB delineations). As we stated in the FY 2015 SNF PPS proposed rule (79 FR 25785), we looked for a transition approach that would provide relief to the largest percentage of adversely affected SNFs with the least impact to the rest of facilities. As discussed above, we believe that the application of a one-year transition blended wage index for all providers best achieves this goal, as it mitigates the negative payment impacts of the new OMB delineations for adversely affected SNFs, without reducing the base rates for all providers. Furthermore, as discussed above, we do not believe a multi-year transition approach would be appropriate, given the need to ensure the most accurate payments possible based on the most current geographic delineations.

While we understand the concern raised by these commenters regarding the potential impact on the subset of SNFs that would experience a decrease in their wage index, we believe this must be weighed against the interests of and impact on all SNFs. As discussed above, and in the SNF PPS proposed rule (79 FR 25785), we believe that our proposed 1-year transition policy with a 50/50 blended wage index for all SNFs appropriately mitigates the negative payment impacts on SNFs that will experience a wage index decrease due to implementation of the new OMB delineations, while having the least impact on the rest of the facilities.

We received a comment on the potential impact of finalizing the proposals in the FY 2015 SNF PPS proposed rule, which is not otherwise addressed in prior sections of this final rule. A discussion of this comment, and our response, appears below.

Comment: In their March 2014 report (available at: *http://www.medpac.gov/documents/Mar14_entirereport.pdf*), and in their comment on this proposed rule, MedPAC recommended that CMS eliminate the market basket update for SNFs and rebase payments for the SNF PPS, beginning with a 4 percent reduction in the base payment rates.

Response: With regard to MedPAC's proposals to eliminate the market basket update for SNFs and to implement a 4 percent reduction to the SNF PPS rates, we would note that CMS does not have the statutory authority to act on either one of these proposals at the current time.

6. Accounting Statement

As required by OMB Circular A–4 (available online at *www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf*), in Table 14, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. Table 14 provides our best estimate of the possible changes in Medicare payments under the SNF PPS as a result of the policies in this final rule, based on the data for 15,399 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 14—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2014 SNF PPS FISCAL YEAR TO THE 2015 SNF PPS FISCAL YEAR

Category	Transfers
Annualized Monetized Transfers.	$750 million.*
From Whom to Whom?	Federal Government to SNF Medicare Providers.

*The net increase of $750 million in transfer payments is a result of the MFP-adjusted market basket increase of $750 million.

7. Conclusion

This final rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2014 (78 FR 47936). Based on the above, we estimate the overall estimated payments for SNFs in FY 2015 are projected to increase by $750 million, or 2.0 percent, compared with those in FY 2014. We estimate that in FY 2015 under RUG–IV, SNFs in urban and rural areas would experience, on average, a 2.0 and 1.9 percent increase, respectively, in estimated payments compared with FY 2014. Providers in the rural Pacific region would experience the largest estimated increase in payments of approximately 4.8 percent. Providers in the urban East South Central and West South Central regions would experience the smallest increase in payments of 1.3 percent.

B. Regulatory Flexibility Act Analysis

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by their non-profit status or by having revenues of $25.5 million or less in any 1 year. We utilized the revenues of individual SNF providers (from recent Medicare Cost Reports) to classify a small business, and not the revenue of a larger firm with which they may be affiliated. As a result, we estimate approximately 91 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards (NAICS 623110), with total revenues of $25.5 million or less in any 1 year. (For details, see the Small Business Administration's Web site at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards*). In addition, approximately 25 percent of SNFs classified as small entities are non-profit organizations. Finally, individuals and states are not included in the definition of a small entity.

This final rule sets forth updates of the SNF PPS rates contained in the SNF PPS final rule for FY 2014 (78 FR 47936). Based on the above, we estimate that the aggregate impact would be an increase of $750 million in payments to SNFs, resulting from the SNF market basket update to the payment rates, as adjusted by the MFP adjustment. While it is projected in Table 13 that all providers would experience a net increase in payments, we note that some individual providers within the same region or group may experience different impacts on payments than others due to the distributional impact of the FY 2015 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a cost or revenue impact of 3 to 5 percent as a significance threshold under the RFA. According to MedPAC, Medicare covers approximately 11 percent of total patient days in freestanding facilities and 22 percent of facility revenue (Report to the Congress: Medicare Payment Policy, March 2014, available at *http://www.medpac.gov/documents/Mar14_EntireReport.pdf*). However, it is worth noting that the distribution of

days and payments is highly variable. That is, the majority of SNFs have significantly lower Medicare utilization (Report to the Congress: Medicare Payment Policy, March 2014, available at *http://www.medpac.gov/documents/Mar14_EntireReport.pdf*). As a result, for most facilities, when all payers are included in the revenue stream, the overall impact on total revenues should be substantially less than those impacts presented in Table 13. As indicated in Table 13, the effect on facilities is projected to be an aggregate positive impact of 2.0 percent. As the overall impact on the industry as a whole, and thus on small entities specifically, is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this final rule would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This final rule would affect small rural hospitals that (1) furnish SNF services under a swing-bed agreement or (2) have a hospital-based SNF. We anticipate that the impact on small rural hospitals would be similar to the impact on SNF providers overall. Moreover, as noted in previous SNF PPS final rules (most recently the one for FY 2014 (78 FR 47968)), the category of small rural hospitals would be included within the analysis of the impact of this final rule on small entities in general. As indicated in Table 13, the effect on facilities is projected to be an aggregate positive impact of 2.0 percent. As the overall impact on the industry as a whole is less than the 3 to 5 percent threshold discussed above, the Secretary has determined that this final rule would not have a significant impact on a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This final rule would not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of $141 million.

D. Federalism Analysis

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that impose substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This final rule would have no substantial direct effect on state and local governments, preempt state law, or otherwise have federalism implications.

List of Subjects in 42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302, 1320a–7j, and 1395hh); Pub. L. 110–149, 121 Stat. 1819.

■ 2. Section 488.433 is revised to read as follows:

§ 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS.

(a) Ten percent of the collected civil money penalty funds that are required to be held in escrow pursuant to § 488.431 and that remain after a final administrative decision will be deposited with the Department of the Treasury in accordance with § 488.442(f). The remaining ninety percent of the collected civil money penalty funds that are required to be held in escrow pursuant to § 488.431 and that remain after a final administrative decision must be used entirely for activities that protect or improve the quality of care or quality of life for residents consistent with paragraph (b) of this section and may not be used for survey and certification operations or State expenses, except that reasonable expenses necessary to administer, monitor, or evaluate the effectiveness of projects utilizing civil money penalty funds may be permitted.

(b) All activities and plans for utilizing civil money penalty funds, including any expense used to administer grants utilizing civil money penalty funds, must be approved in advance by CMS and may include, but are not limited to:

(1) Support and protection of residents of a facility that closes (voluntarily or involuntarily).

(2) Time-limited expenses incurred in the process of relocating residents to home and community-based settings or another facility when a facility is closed (voluntarily or involuntarily) or downsized pursuant to an agreement with the State Medicaid agency.

(3) Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities.

(4) Facility improvement initiatives, such as joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance and performance improvement programs.

(5) Development and maintenance of temporary management or receivership capability such as but not limited to, recruitment, training, retention or other system infrastructure expenses. However, as specified in § 488.415(c), a temporary manager's salary must be paid by the facility. In rare situations, if the facility is closing, CMS plans to stop or suspend continued payments to the facility under § 489.55 of this chapter during the temporary manager's duty period, and CMS determines that extraordinary action is necessary to protect the residents until relocation efforts are successful, civil money penalty funds may be used to pay the manager's salary.

(c) At a minimum, proposed activities submitted to CMS for prior approval must include a description of the intended outcomes, deliverables, and sustainability; and a description of the methods by which the activity results will be assessed, including specific measures.

(d) Civil money penalty funds may not be used for activities that have been disapproved by CMS.

(e) The State must maintain an acceptable plan, approved by CMS, for the effective use of civil money funds, including a description of methods by which the State will:

(1) Solicit, accept, monitor, and track projects utilizing civil money penalty funds including any funds used for state administration.

(2) Make information about the use of civil money penalty funds publicly available, including about the dollar amount awarded for approved projects, the grantee or contract recipients, the

results of projects, and other key information.

(3) Ensure that:

(i) A core amount of civil money penalty funds will be held in reserve for emergencies, such as relocation of residents pursuant to an involuntary termination from Medicare and Medicaid.

(ii) A reasonable amount of funds, beyond those held in reserve under paragraph (e)(3)(i) of this section, will be awarded or contracted each year for the purposes specified in this section.

(f) If CMS finds that a State has not spent civil money penalty funds in accordance with this section, or fails to make use of funds to benefit the quality of care or life of residents, or fails to maintain an acceptable plan for the use of funds that is approved by CMS, then CMS may withhold future disbursements of civil money penalty funds to the State until the State has submitted an acceptable plan to comply with this section.

Dated: July 24, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 30, 2014.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2014–18335 Filed 7–31–14; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 150 August 5, 2014

Part IV

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 204, et al.

Federal Acquisition Regulations; Final Rule and Proposed Rule

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, and 252

RIN 0750–AI32

Defense Federal Acquisition Regulation Supplement: Foreign Commercial Satellite Services (DFARS Case 2014–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 that prohibits acquisition of commercial satellite services from certain foreign entities.

DATES: Effective August 5, 2014.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 6, 2014, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014–D010, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2014–D010'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2014–D010.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2014–D010'' on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2014–D010 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends the DFARS to implement section 1602 of the NDAA for FY 2014 (Pub. L. 113–66). Section 1602 prohibits award of a contract for commercial satellite services to a foreign entity if the Secretary of Defense reasonably believes that the foreign entity—

- Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or
- Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country.

A covered foreign country means the People's Republic of China, North Korea, or any country that is a state sponsor of terrorism, as described in section 1261(c)(2) of the NDAA for FY 2013 (Pub. L. 112–239). State sponsors of terrorism, as determined by the Secretary of State, currently include Cuba, Iran, Sudan, and Syria.

II. Discussion and Analysis

This interim rule adds a new section at DFARS 225.772 that addresses the prohibition on acquisition of commercial satellite services from certain foreign entities and adds a provision at DFARS 252.225–7049 that requires offerors to represent whether they are foreign entities that fall within the prohibition, or whether they are offering commercial satellite services provided by such a foreign entity. If the offeror responds affirmatively to any of the representations, then the offeror must provide further disclosure regarding the circumstances.

The prohibition on award to such foreign entities does not apply if the Secretary of Defense for Acquisition, Technology, and Logistics or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter into such contract and, not later than seven days before entering into such contract, the Under Secretary of Defense making the determination, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment in accordance with 10 U.S.C. 2279.

There are conforming changes to DFARS 204.1202 and 252.205–7007 to include the new representations in the annual representations and certifications, and changes to DFARS 212.301(f) to add the new provision to the list of provisions and clauses that are applicable to the acquisition of commercial items.

III. Applicability to Acquisitions Not Greater Than the Simplified Acquisition Threshold (SAT) and Commercial Items

10 U.S.C. 2279 is silent on applicability to contracts and subcontracts in amounts not greater than the SAT or for the acquisition of commercial items. Also, the statute does not provide for criminal or civil penalties. Therefore, it does not apply to the acquisition of contracts and subcontracts in amounts not greater than the SAT or the acquisition of commercial items unless the Director, DPAP, makes a written determination as provided in 41 U.S.C. 1905.

There is a potential risk to national security if DoD uses commercial satellite services for DoD communications and the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations, regardless of the dollar value of the contract or order. Likewise, if launch or other satellite services under the contract are occurring in a covered country, the government of that country could impact the ability of the foreign entity to adequately provide those services. Furthermore, although 10 U.S.C. 2279 does not specifically reference 41 U.S.C. 1906, the statute only applies to the acquisition of commercial satellite services, so exempting commercial items from application of the statute would negate the intended effect of the statute. Therefore, consistent with 41 U.S.C. 1905 and 1906, the Director, Defense Procurement and Acquisition Policy, has determined that it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT and acquisitions of commercial items from the applicability of 10 U.S.C. 2279.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1602 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014. Section 1602 added 10 U.S.C. 2279, which prohibits acquisition of commercial satellite services from certain foreign entities.

The objective of the rule is to implement 10 U.S.C. 2279, which is the legal basis for the rule. The statute prohibits award of contracts for commercial satellite services to a foreign entity that—

- Is an entity in which the government of a covered foreign country (i.e., the People's Republic of China, North Korea, Cuba, Iran, Sudan, or Syria) has an ownership interest that enables the government to affect satellite operations; or
- Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country.

DoD estimates that this rule will apply to less than 111 small entities. According to Federal Procurement Data System data for FY 2013, 111 small entities were awarded contracts or orders for services in PSC D304 (ADP Telecommunications and Transmission Services), of which commercial satellite services are a subset. Although the focus of the Regulatory Flexibility Act is protection of domestic small business entities that are eligible for assistance from the Small Business Administration, there may be domestic small business entities in the United States that offer the satellite services of a foreign entity that would be restricted by this rule.

This rule requires an annual representation as to whether the offeror is, or is not, a foreign entity subject to the prohibitions of the statute or is, or is not, offering commercial satellite services provided by such a foreign entity. Further information is required if the offeror provides an affirmative response to any of the representations, but such affirmative response and further submission of information is expected to be extremely rare.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule will not have a significant economic impact on any small entities, unless they are offering commercial satellite services provided by a foreign entity that is subject to the restrictions of this rule. DoD was not able to identify any alternatives that would reduce the burden on small entities and meet the objectives of the rule.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014–D010), in correspondence.

VI. Paperwork Reduction Act

The rule contains information collection requirements that required the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement is entitled *Foreign Commercial Satellite Services.*

A. Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 380.

Responses per respondent: 1.

Total annual responses: 380.

Preparation hours per response: .25 hours.

Total response Burden Hours: 95.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: (Amy G. Williams), OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2014–D010 in the subject line of the message.

VII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because to implement 10 U.S.C. 2279, as added by section 1602 of the National Defense Authorization Act for FY 2014 (Pub. L. 113–66), which was effective upon enactment (December 26, 2013). 10 U.S.C. 2279 restricts acquisition of commercial satellite services from certain foreign entities. Until this statute is implemented in the DFARS, there is risk that contracting officers may acquire commercial satellite services in violation of the law, and can create risk to the U.S. military and lost opportunities for the U.S. industrial base.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 204, 212, 225, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by—

■ a. Removing, in paragraph (2) introductory text, ''Central Contractor Registration'' and adding ''System for Award Management'' in its place;

■ b. Redesignating paragraph (2)(xi) through (xiii) as (2)(xii) through (xiv), respectively; and

■ c. Adding a new paragraph (2)(xi) to read as follows:

204.1202 Solicitation provision.

* * * * *

(2) * * *

(xi) 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301 by—

■ a. Redesignating paragraphs (f)(xlviii) through (lxxii) as (f)(xlix) through (lxxiii); and

■ b. Adding a new paragraph (f)(xlviii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xlviii) Use the provision at 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, as prescribed at 225.772–5.

* * * * *

PART 225—FOREIGN ACQUISITION

225.771 [Added and reserved]

■ 4. Add and reserve section 225.771.

■ 5. Add sections 225.772, 225.772–0, 225.772–1, 225.772–2, 225.772–3, 225.772–4, and 225.772–5 to read as follows:

225.772 Prohibition on acquisition of commercial satellite services from certain foreign entities.

225.772–0 Scope.

This section implements 10 U.S.C. 2279.

225.772–1 Definitions.

As used in this section, *covered foreign country, foreign entity, government of a covered foreign country, satellite services,* and *state sponsor of terrorism* are defined in the provision at 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations.

225.772–2 Prohibition.

The contracting officer shall not award a contract for commercial satellite services to—

(a) A foreign entity if the Under Secretary of Defense for Acquisition, Technology, and Logistics or the Under Secretary of Defense for Policy reasonably believes that the foreign entity—

(1) Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

(2) Plans to or is expected to provide or use launch or other satellite services under the contract from a covered foreign country; or

(b) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section.

225.772–3 Procedures.

(a) If an offeror discloses information in accordance with paragraph (d) of the provision 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, the contracting officer—

(1) Shall forward the information regarding the offeror through agency channels to the address at PGI 225.772–3; and

(2) Shall not award to that offeror, unless an exception is determined to apply in accordance with 225.772–4.

(b)(1) If the otherwise successful offeror provides negative responses to all representations in the provision at 252.225–7049, the contracting officer may rely on the representations, unless the contracting officer has an independent reason to question the representations.

(2) If the contracting officer has an independent reason to question a negative representation of the otherwise successful offeror, the contracting officer shall consult with the office specified in PGI 225.772–3, prior to deciding whether to award to that offeror.

225.772–4 Exception.

(a) The prohibition in 225.772–2 does not apply if—

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics, or the Under Secretary of Defense for Policy, without power of redelegation, determines that it is in the national security interest of the United States to enter into such contract; and

(2) Not later than seven days before entering into such contract, the Under Secretary of Defense making the determination in paragraph (a)(1) of this section, in consultation with the Director of National Intelligence, submits to the congressional defense committees a national security assessment, in accordance with 10 U.S.C. 2279.

(b) If requesting an exception pursuant to paragraph (a) of this section, the contracting officer shall forward the request through agency channels to the address at PGI 225.772–3, providing any available information necessary for the Under Secretary of Defense making the determination in paragraph (a)(1) of this section to evaluate the request and perform a national security assessment, in accordance with 10 U.S.C. 2279.

225.772–5 Solicitation provision.

Use the provision at 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representations, in solicitations for the acquisition of commercial satellite services. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7049 in the solicitation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.204–7007 by—

■ a. Removing the clause date ''(MAR 2014)'' and adding ''(AUG 2014)'' in its place;

■ b. Redesignating paragraphs (d)(1)(v) through (vii) as (d)(1)(vi) through (viii); and

■ c. Adding a new paragraph (d)(1)(v) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d)(1) * * *

(v) 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—

Representations. Applies to solicitations for the acquisition of commercial satellite services.

* * * * *

■ 7. Add section 252.225–7049 to read as follows:

252.225–7049 Prohibition on Acquisition of Commercial Satellite Services From Certain Foreign Entities—Representations.

As prescribed in 225.772–5, use the following provision:

Prohibition on Acquisition of Commercial Satellite Services From Certain Foreign Entities—Representations (Aug 2014)

(a) *Definitions.* As used in this provision—

Covered foreign country means—

(i) The People's Republic of China;

(ii) North Korea; or

(iii) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

Foreign entity means—

(i) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(ii) Notwithstanding paragraph (i) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

Government of a covered foreign country includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

Satellite services means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

State sponsor of terrorism means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism subject to this provision are Cuba, Iran, Sudan, and Syria. (10 U.S.C. 2327)

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS 225.71–4, no contract for commercial satellite services may be awarded to—

(1) A foreign entity if the Under Secretary of Defense for Acquisition, Technology, and Logistics or the Under Secretary of Defense for Policy reasonably believes that the foreign entity—

(i) Is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; or

(ii) Plans to, or is expected to, provide or use launch or other satellite services under the contract from a covered foreign country; or

(2) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this section.

(c) *Representations.* The Offeror represents that—

(1) It [ ] is, [ ] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(2) It [ ] is, [ ] is not a foreign entity that plans to provide or use launch or other satellite services under the contract from a covered foreign country;

(3) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations; and

(4) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide or use launch or other satellite services under the contract from a covered foreign country.

(d) *Disclosure.* If the Offeror has responded affirmatively to any of the above representations, provide the following information, as applicable:

(1) Identification of the foreign entity proposed to provide the commercial satellite services, if other than the Offeror.

(2) To the extent practicable, a description of any ownership interest that the government of a covered foreign country has in the foreign entity proposed to provide the satellite services, including identification of the covered foreign country.

(3) Identification of any covered foreign country in which launch or other satellite services will be provided or used, and a description of any satellite services planned to be provided or used in that country.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

[FR Doc. 2014–18204 Filed 8–4–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 209, 212, 225, and 252

RIN 0750–AI34

Defense Federal Acquisition Regulation Supplement: State Sponsors of Terrorism (DFARS Case 2014–D014)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify and relocate coverage relating to state sponsors of terrorism (as identified by the Department of State), add an explicit representation, and conform the terminology.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before October 6, 2014, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014–D014, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 201X–D0XX'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2014–D014.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2014–D014'' on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2014–D014 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

10 U.S.C. 2327 requires a firm or a subsidiary of a firm that submits an offer in response to a DoD solicitation to disclose if the firm is owned or controlled by a foreign government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 App. U.S.C. 2405 (j)(1)(A)) has repeatedly provided support for acts of international terrorism. The statute further provides restrictions on entering into contracts or subcontracts with such firms.

The Department of State identifies the countries identified as sponsoring terrorism on a list of ''State Sponsors of Terrorism'' available at *http://www/state.gov/ct/list/c14151.htm.*

The restrictions are currently implemented in the DFARS in subpart 209.1, Responsible Prospective Contractors; subpart 209.4, Debarment, Suspension, and Ineligibility; and clauses 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country; and 252.209–7004, Subcontracting with Firms that are owned or controlled by the Government of a Terrorist Country.

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

II. Discussion and Analysis

A. Clarification

The prohibition, notification, and disclosure requirements have been amended to—

- Be consistent with the disclosure requirements of current DFARS 252.209–7001(e); and
- Make clear in each case whether the term ''subsidiary'' refers to a subsidiary of the offeror, or whether the offeror itself is a subsidiary of another firm that owns or controls the offeror.

B. Representation

Although the solicitation provision 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, is currently included in the annual representations and certifications in the System for Award Management (SAM), the provision does not actually contain an explicit representation. The nonstatutory certification was removed from the provision in the 1991 DFARS rewrite, due to an initiative to streamline the DFARS. However, the fact that an offeror fails to disclose any significant interest by the government of a country that is a state sponsor of terrorism is not equivalent to an explicit representation that there is no such interest. DoD is proposing to include an explicit representation in the relocated provision at 252.225–70XX, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, that, unless the offeror submits with its offer the disclosure required in paragraph (d) of the provision, the offeror represents, by submission of its offer, that that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

1. The offeror;
2. A subsidiary of the offeror; or
3. Any other firm that owns or controls the offeror.

If this representation is false, then an offeror can be held liable for a false statement if the offeror does not disclose the ownership or control by the government of a country that is a state sponsor of terrorism.

C. Terminology

In this proposed rule, the term ''terrorist country'' has been replaced with the more accurate term ''country that is a state sponsor of terrorism,'' which is consistent with the terminology used by the Department of State and in section 1261(c)(2)(C) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

D. Location

The text at 209.104–1(g)(i) and 209.104–70(a) has been relocated to DFARS subpart 225.7 and the provision at 252.209–7001 has been relocated to 252.225–70XX. Subpart 225.7, Prohibited Sources, is a better location because the prohibition is based on ownership or control of an offeror by the government of specified countries, rather than the responsibility of the individual offeror. Furthermore, DoD has included in DFARS 225.7 coverage of the restriction of acquisition of commercial satellite services from certain foreign entities (including restrictions relating to countries that are state sponsors of terrorism) (see DFARS Case 2014–D0).

The coverage at 209.405–2 and 209.409 is properly located in subpart 209.4, Debarment, Suspension, and

Ineligibility, because it relates to treatment of entities listed as ineligible in the Exclusion section of the System for Award Management (SAM). However, cross-references have been added between DFARS 209.405–2 and 225.771.

E. Applicability

This rule does not change the applicability of the provision 252.209–7001 or the clause at 252.209–7004 to solicitations for an amount less than the simplified acquisition threshold or for the acquisition of commercial items.

10 U.S.C. 2327(f) specifically excludes applicability of the statute to contracts for acquisitions less than $100,000 (now escalated to $150,000, in accordance with 41 U.S.C. 1908).

The provision currently at DFARS 252.209–7001 is included in the Exclusion section of SAM and is applicable to the acquisition of commercial items. Therefore, conforming changes are required at 204.1202(2)(i), 212.201(f)(xi), and 252.204–7007.

The clause at 252.209–7004 is not prescribed for use in the acquisitions of commercial items. This clause implements paragraphs (d) and (e) of 10 U.S.C. 2327, which were enacted in 1997 (Pub. L. 105–85) (subsequent to the Federal Acquisition Streamlining Act of 1994), and therefore were inapplicable to the acquisitions of commercial items and COTS items, unless a determination was made that it would not be in the best interest of the Government to exempt these acquisitions from applicability of the statute.

The prescription for the solicitation provision 252.225–70XX has been slightly modified, to exclude applicability to acquisitions of commercial satellite services, which are covered by a separate provision (see DFARS Case 2014–D010).

III. Executive Orders 12866 and 13563

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

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule will only have an impact on a firm, or a subsidiary of a firm, in which the government of a country that is a state sponsor of terrorism has a significant interest.

The number of domestic entities significantly impacted by this rule will be minimal, if any. For the definition of ''small business,'' the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: ''(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' Therefore, an initial regulatory flexibility analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014–D014), in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0187, entitled ''Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements).'' The burden in this clearance that is associated with the provision 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, is estimated at 1 hour, because such disclosure occurs rarely, if ever. 10 U.S.C. prohibits award to a firm or a subsidiary of a firm if the government of country that is a state sponsor of terrorism has a significant interest in the firm or subsidiary, unless the Secretary of Defense grants a waiver.

List of Subjects in 48 CFR Parts 204, 209, 212, 225, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 209, 212, 225, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 204, 209, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by—
■ a. Removing paragraph (2)(i);
■ b. Redesignating paragraphs (2)(ii) through (xi) as (2)(i) through (x), respectively; and
■ c. Adding a new paragraph (2)(xi).

204.1202 Solicitation provision.

* * * * *

(2) * * *

(xi) 252.225–70XX, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

209.104–1 [Amended]

■ 3. Amend section 209.104–1 by—
■ a. Removing paragraph (g)(i); and
■ b. Redesignating paragraph (g)(ii) as (g)(i).
■ 4. Amend section 209.104–70 by—
■ a. Revising the section heading;
■ b. Removing paragraph (a); and
■ c. Removing the paragraph ''(b)'' designation from the remaining text.

The revision reads as follows:

209.104–70 Solicitation provision.

* * * * *

■ 5. Revise section 209.405–2 to read as follows:

209.405–2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense in the Exclusions section of the System for

Award Management as being owned or controlled by the government of a country that is a state sponsor of terrorism unless the agency head states in writing the compelling reasons for the subcontract. (See also 225.771.)

■ 6. Revise section 209.409 to read as follows:

209.409 Solicitation provision and contract clause.

Use the clause at 252.209–7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism, in solicitations and contracts with a value of $150,000 or more.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 7. Amend section 212.301 by—

■ a. Removing paragraph (f)(xi);

■ b. Redesignating paragraphs (f)(xii) through (xlviii) as (xi) through (xlvii); and

■ c. Adding a new paragraph (f)(xlviii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xlviii) Use the provision at 252.225–70XX, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in 225.771–5, to comply with 10 U.S.C. 2327(b).

PART 225—FOREIGN ACQUISITION

225.701 [Removed]

■ 8. Remove section 225.701.

■ 9. Add sections 225.771, 225.771–0, 225.771–1, 225.771–2, 225.771–3, 225.771–4, and 225.771–5 to subpart 225.7 to read as follows.

225.771 Prohibition on contracting or subcontracting with a firm that is owned or controlled by the government of a country that is a state sponsor of terrorism.

225.771–0 Scope.

This section implements 10 U.S.C. 2327(b).

225.771–1 Definition.

''State sponsor of terrorism,'' as used in this section, is defined in the provision at 252.225–70XX, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

225.771–2 Prohibition.

(a) The contracting officer shall not award a contract of $150,000 or more to a firm when a foreign government that is a state sponsor of terrorism owns or controls, either directly or indirectly, a significant interest in—

(i) The firm;

(ii) A subsidiary of the firm; or

(iii) Any other firm that owns or controls the firm.

(b) For restrictions on subcontracting with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a country that is a state sponsor of terrorism, see 209.405–2.

225.771–3 Notification.

Any disclosure that the government of a country that is a state sponsor of terrorism has a significant interest in an offeror, a subsidiary of an offeror, or any other firm that owns or controls an offeror shall be forwarded through agency channels to the address at PGI 225.771–3.

225.771–4 Waiver of prohibition.

The prohibition in 225.771–2 may be waived if the Secretary of Defense determines that a waiver is not inconsistent with the national security objectives of the United States in accordance with 10 U.S.C. 2327(c).

225.771–5 Solicitation provision.

Use the provision at 252.225–70XX, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items (other than commercial satellite services), that are expected to result in contracts of $150,000 or more. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–70XX in the solicitation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 252.204–7007 by—

■ a. Removing the clause date ''(AUG 2014)'' and adding ''(DATE)'' in its place;

■ b. Removing paragraph (d)(1)(i);

■ c. Redesignating paragraphs (d)(1)(ii) through (v) as (d)(1)(i) through (iv); and

■ d. Adding a new paragraph (d)(1)(v) to read as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d)(1) * * *

(v) 252.225–70XX, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism. Applies to all solicitations expected to result in contracts of $150,000 or more.

* * * * *

252.209–7001 [Removed and Reserved]

■ 11. Remove and reserve section 252.209–7001.

252.209–7002 [Amended]

■ 12. Amend the provision introductory text by removing ''209.104–70(b)'' and adding ''209.104–70'' in its place.

■ 13. Amend section 252.209–7004 by—

■ a. Revising the clause heading, clause title, and date; and

■ b. Amending paragraphs (a) and (b) by removing ''terrorist country'' and adding ''country that is a state sponsor of terrorism'' in both places.

The revision reads as follows:

252.209–7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.

* * * * *

Subcontracting With Firms That Are Owned or Controlled by the Government of a Country That Is a State Sponsor of Terrorism (Date)

* * * * *

■ 14. Add a new section 252.225–70XX to read as follows:

252.225–70XX Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

As prescribed in 225.771–5, use the following provision:

Disclosure of Ownership or Control by the Government of a Country That Is a State Sponsor of Terrorism (Date)

(a) *Definitions.* As used in this provision—

Government of a country that is a state sponsor of terrorism includes the state and the government of a country that is a state sponsor of terrorism, as well as any political subdivision, agency, or instrumentality thereof.

Significant interest means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in ''nominee shares,'' ''street names,'' or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

State sponsor of terrorism means a country determined by the Secretary of State, under

section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Cuba, Iran, Sudan, and Syria.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, unless a waiver is granted by the Secretary of Defense, no contract may be awarded to a firm if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in—

(1) The firm;

(2) A subsidiary of the firm; or

(3) Any other firm that owns or controls the firm.

(c) *Representation.* Unless the Offeror submits with its offer the disclosure required in paragraph (d) of this provision, the Offeror represents, by submission of its offer, that the government of a country that is a state sponsor of terrorism does not own or control a significant interest in—

(1) The Offeror;

(2) A subsidiary of the Offeror; or

(3) Any other firm that owns or controls the Offeror.

(d) *Disclosure.*

(1) The Offeror shall disclose in an attachment to its offer if the government of a country that is a state sponsor of terrorism owns or controls a significant interest in the Offeror; a subsidiary of the Offeror; or any other firm that owns or controls the Offeror.

(2) The disclosure shall include—

(i) Identification of each government holding a significant interest; and

(ii) A description of the significant interest held by each government.

(End of provision)

[FR Doc. 2014–18206 Filed 8–4–14; 8:45 am]

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

44635–45084 1
45085–45308 4
45309–45670 5

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13673 45309

7 CFR

610 44635
622 44635
625 44635
652 44635
662 44635
1455 44635
1465 44635
3201 44641
Proposed Rules:
457 44719

10 CFR

Proposed Rules:
430 45377
431 45377

12 CFR

Proposed Rules:
390 45380

14 CFR

25 ..... 44657, 44658
39 ..... 44660, 44663, 44666, 44669, 44672, 44677, 45085, 45317, 45322, 45324, 45327, 45329, 45332, 45335, 45337, 45340
71 44679
Proposed Rules:
39 ..... 44722, 45135, 45137, 45140, 45383, 45385

15 CFR

734 45288
738 45288
740 45288
743 45288
744 44680
772 45288
774 ..... 45088, 45288

22 CFR

126 45089

23 CFR

Proposed Rules:
790 45146

27 CFR

9 44687
478 45091

28 CFR

Proposed Rules:
0 45387
36 44976
90 45387

31 CFR

Proposed Rules:
1010 45151
1020 45151
1023 45151
1024 45151
1026 45151

33 CFR

100 ..... 44689, 44693, 45092, 45093
117 ..... 44693, 44696, 45344, 45345
165 44698
Proposed Rules:
117 44724

34 CFR

Ch. III 45346

36 CFR

Proposed Rules:
51 45390

37 CFR

Proposed Rules:
370 ..... 45393, 45395

38 CFR

3 45093
4 45093

39 CFR

121 44700

40 CFR

52 ..... 45103, 45105, 45108, 45350
70 45108
81 45350
Proposed Rules:
52 ..... 44728, 45174, 45393, 45395
70 45174
180 44729

42 CFR

37 45110
424 44702
447 45124
488 45628

44 CFR

67 ..... 44704, 44706, 44707, 45124, 45125, 45127
Proposed Rules:
67 44733

45 CFR

162 45128

47 CFR

79 45354
90 45371

Proposed Rules:

79 45397

48 CFR

204 45662
212 45662
225 45662
252 45662

Proposed Rules:

2 45408
3 45408
4 45408
5 45408
7 45408
8 45408
14 45408
15 45408
16 45408
52 45408
204 45666
209 45666
212 45666
225 45666
252 45666

49 CFR

214 45134
592 45373

Proposed Rules:

130 45016
171 45016
172 45016
173 45016
174 45016
179 45016
541 45412

50 CFR

17 ..... 44712, 45242, 45274

Proposed Rules:

17 45420
216 44733
622 44735
648 44737

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 30, 2014

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